MAGISTRATE-JUDGE

THE STORY OF
THE PROVINCIAL COURT OF
BRITISH COLUMBIA

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THE STORY OF THE PROVINCIAL COURT OF BRITISH COLUMBIA

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DR. JOHN SEBASTIAN HELMCKEN

Dr. John Sebastian Helmcken practiced medicine through his lifetime in Victoria. He was the first Magistrate in what was to become British Columbia, appointed by Governor Blanshard for Fort Rupert, July 10, 1850, resigning the same year and being re-appointed in 1853 a Justice of the Peace in Victoria, serving in that capacity for many years. He was elected to the first Legislative Assembly, Vancouver Island 1855, Speaker of Assembly until 1866 and of the Legislative Council of British Columbia until 1871.

Foreword

One hundred and thirty-six years ago the first Magistrate was appointed in British Columbia. The Provincial Court of British Columbia today is the beneficiary of justice administered over the years by thousands of magistrates and judges sitting in far-flung places. Their story is part of the historical fabric of this Province; up to now, a story scarcely recorded.

When I encouraged Alfred Watts, Q.C. to undertake this work, I knew that there was no other with so great a knowledge of the legal and judicial lore of this Province. This book proves that. But I hoped for more — that it would reveal something of his wisdom, his concept of justice and the high standards he set for himself as citizen, soldier, magistrate and judge. I have not been disappointed.

Gerald R.B. Coultas
Chief Judge

Author's Note:

The writing of this story has been a privilege. I am grateful to Chief Judge Coultas and all those who work with him for their interest and help at all times. I must particularly mention Rosemary Chin who has learned to read my scribbling and with unfailing cheerfulness set about transcribing each tortured revision.

A great many people have contributed their knowledge and their time, the Honourable Mr. Justice Peter Seaton, the former Chief Judges Cyril White, Lawrence Brahan and Lawrence Goulet, the Honourable Judges Donald MacDonald and Kenneth Arkell, His Honour Allan Guinet, Dr. Gilbert Kennedy, Q.C., David Vickers, Esq., Neil McDiarmid, Q.C., G.R. Kidston, Esq., Dr. Ian Mugridge, E.G.B. Stevens, Esq., the Provincial Archives of British Columbia and there were many others. My thanks to all of them.

Alfred Watts

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Abbreviations

A	The Advocate
Court	Magistrates' Court or The Provincial Court of British Columbia as applicable
Department	The Department of the Attorney General
Law Society	The Law Society of British Columbia
MC	Magistrates' Conference

Introduction

This book does not contain references to every Ordinance, Act and Regulation, Federal, Provincial or Municipal which have impinged on the Magistrates' Court, now the Provincial Court of British Columbia, from its origins with the English Act of 1803.[1] That monumental task is better left to the thesis type of approach. Nor is it generally an anecdotal collection seeking to amuse the reader at the expense of those unsung Judges, laymen and legally trained, who laboured so long for so little in honest efforts to bring justice to a wild land.

Rather it is an attempt to capture something of the evolution of a magisterial system from nought in 1800 to the present time. The result, today, is a cadre of judges who, providing the necessary support staff is available, have the understanding, industry and expertise to ensure within their jurisdiction the even dispensation of justice throughout British Columbia.

The history is developed from the written and oral records of those who, through the years, sat in, legislated for and administered the Magistrates' courts of the Province. It outlines developments from 1803 on, generally in an impoverished and neglected state for the first 150 years. A judicial system based generally on the English common law appeared between 1850 and British Columbia's entry into Confederation in 1871. After that event, while there were changes, there was little progress toward the goal of an even justice for all until the founding of the Juvenile Court in 1910 commenced a process which led, by a tortuitous path, to a survey of the provincial magisterial system in 1943 and the original Magistrates' Conference in 1947. Here is found the first vestige of judicial education and the commencement of a closer association between Judges. Following closely in subsequent years was the rapid increase of lawyers in outside areas who could understand both the needs and the weaknesses of the magisterial system and communicate their concerns to government.

The next big step came in 1955 with the need for judges with legal training caused by changes in the Criminal Code 1955 which in turn led to the "travelling Magistrates" of the 60's. Meanwhile and perhaps not so noticeable was the steady growth of legislation of a more complex nature affecting children and the family and continued expansion of demands on the Small Claims Court not only in monetary jurisdiction but in very technical legislation affecting consumer rights. All these factors had the effect of increasing the importance of the Magistrates' Bench underlining the need for an improved status

1. 43 Geo III Cap 138

and proper training and leading in 1969 to the Provincial Court of British Columbia with a Chief Judge and Judicial Council which commenced the process of taking over direction of the Court, previously exercised by Government and particularly by the Department of the Attorney General.

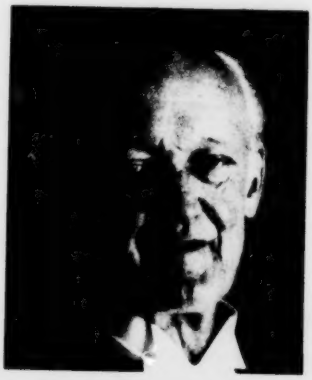
The new Court was subject to vast changes through 1974 - 1975, the Judicial Council being given greater authority which with the requirement that all judges be legally trained, established an independent professional Court with financial and administrative responsibility removed from the Municipalities, financing being assumed by the Province and administration divided as appropriate between the Court and Government.

That an independent status could not simply be accepted as an ineradicable fact and required constant awareness is portrayed in the various concerns for judicial independence demonstrated in events between 1969 and 1980.

Thus, looking at the kaleidoscope of judicial history since 1803, it is clear that nobody at any particular time invented the Provincial Court of British Columbia. In one guise or another it has been on the Pacific slope since fur trading days, gradually increasing in stature and capability as events demanded, now crystallized in name, structure, direction and complement, enabling it to function effectively as an independent entity.

Let it never be forgotten that first the Magistrates and now the Provincial Court Judges are the stewards of the freedom and welfare of all citizens and that their duties are twofold — to the community and to the individuals who come before them, with no importance one over the other.

Chief Judges of the Provincial Court of British Columbia



Chief Judge Cyril White
1970 - 1972

Chief Judge Lawrence C. Brahan
1972 - 1978

Chief Judge Lawrence S. Goulet
1978 - 1983

Chief Judge Gerald R.B. Coultas
1983 -

1. The Origins

Before 1849: The Colony of Vancouver Island, 1849-1866 — The Mainland, 1857-1858 — The Colony of British Columbia, 1858-1866 — The United Colony, 1866-1871

The origins of the Provincial Court of British Columbia of 1969[1] go back to the Canada Jurisdiction Act 1803[2] and the Criminal Civil Jurisdiction Act 1821[3] which purported to extend the jurisdiction of the Courts of Justice of Upper and Lower Canada to the Indian Territories including the West Coast.

Because there was no means of enforcing this legislation and little communication between the East and the Pacific slope, jurisdiction of the Courts was in name only and the Hudson's Bay Company pursuant to its Charter of 1670[4] extended to the West Coast in 1838[5] constituted the Authority. Under the Charter, the Factors could govern Company employees or those living under the aegis of the Company in all causes civil and criminal according to the laws of England. Also the Company could appoint Justices of the Peace and this was done in Central Canada although there is no hard evidence that there were any appointments in the West, the Company Factors in what is now British Columbia providing rough justice for their employees without courtesy of legal appointment. The Indian people were left to their own laws and customs save where the rights of the white men were impinged on when the reaction of the Company was not much clothed with the mantle of "due process" as evidenced by the stories of the terrible Waccan[6] and also by the description of Governor Douglas - "all his dealings were with Indians and his idea of law was that might was right."[7]

Such was the general condition of justice in what was to become British Columbia when immigration commenced from England about 1850 bringing with it the principles of the English justice system to be applied, discarded or amended as seemed appropriate in a new country. The English magistracy at that time consisted, on the criminal

1. 1969 R.S.B.C. Cap 28
2. 43 George III Cap 138
3. 1 & 2 George IV Cap 66
4. Granted by His Majesty King Charles II in the 22nd year of his reign
5. Granted by Her Majesty Queen Victoria May 30, 1838
6. A.G. Morice - History of the Northern Interior of British Columbia p. 253, republished 1978, Smithers, B.C.
7. British Columbia, A History by Margaret Ormsby p. 151, MacMillans in Canada 1958

side, of Stipendiary Magistrates in some urban centres and Justices of the Peace with legal advisers for the rest of the country while, on the civil side, there was a County Court system which was in essence a Small Claims Court. Perhaps it was the failure to follow the English Court system in toto, i.e. provide legal advisers for Justices of the Peace that led eventually over a hundred years later to the all professional court in British Columbia.

The Colony of Vancouver Island, 1849-1866

For Vancouver Island, the first real step toward an actual justice system was the action of the British House of Commons in passing the Act of 1849 "to provide for the Administration of Justice in Vancouver Island"[8] which repealed the Acts of 1803 and 1821 and provided for both courts of record and appointment of Justices of the Peace and that the local legislature, when established, could regulate the administration of justice. To give effect to that legislation, Governor Blanshard was appointed July 16, 1849, arriving at Fort Victoria in 1850.

That year, on July 10, Governor Blanshard appointed John Sebastian Helmcken, a young doctor working for the Hudson's Bay Company at Fort Rupert near the site of the present town of Port Hardy, to become our first Magistrate and Justice of the Peace "You are hereby appointed to act as Magistrate and Justice of the Peace for the protection and preservation of order among Her Majesty's subjects in and about Fort Rupert and in the adjoining district of Vancouver Island, subject always to Her Majesty's approval of the appointment when your Commission will be formed and made out and forwarded to you. Till such time this letter will be sufficient warranty for your acting as Magistrate of the district and exercising all powers that belonged to that Office."[9]

Very shortly after his appointment, a situation arose in which three sailors had deserted from a ship at Fort Rupert, and it is suggested but not proved that the Hudson's Bay Company had instructed the Indians to bring them back dead or alive and unfortunately "dead" became the operative word. Magistrate Helmcken was requested to investigate this matter and found that he could get no truth out of the Company servants as to what had actually happened and what instructions had been given. Furthermore, any investigation was stultified by the fact that the Magistrate could obtain no persons who would serve as constables to assist him in the further investigation. Governor Blanshard then reported, "I regret to say that Dr. Helmcken has declined acting any longer as Magistrate on the ground that the only causes are between the Hudson's Bay Company and its servants; and being a paid servant of the former, he cannot be considered an

8. 12 & 13 Victoria Cap 48
9. Howay & Scholefield - British Columbia - Vol. 1, p. 518

impartial person. This objection is good against all servants of the Company holding Commissions as they can be removed from the Colony at a moment's notice by their employers and are kept in the greatest subjection."[10] Thus did Dr. Helmcken stand up for the essentials of judicial independence which are as pertinent today as in 1850.

Governor Blanshard departed in 1851 having found himself in a totally untenable position vis-a-vis the chief Factor of the Hudson's Bay Company, James Douglas, who by virtue of his appointment controlled the Territory and all those in it. The departing Governor appointed a provisional Council of three and Douglas became Governor while retaining his position with the Company. This obviously involved a conflict of interest and it is a tribute to the man that the affairs in the Colony worked out as well as they did. Until 1856, when the first legislative assembly was elected, Governor Douglas, generally without consulting his Council, conducted what could only be described as a benevolent despotism and indeed, until the departure of the Hudson's Bay Company in 1858, the so-called Legislature meant little save to regularize earlier steps taken by the Council which in essence had been decisions of the Governor.

In 1853, Governor Douglas began to lay the foundations of a permanent judicial system for the Colony recommending to the Legislative Council the appointment of Edward Langford, Thomas Skinner, Kenneth McKenzie, and Thomas Blenkhorn as Magistrates and Justices of the Peace. They were to receive a fee of $5.00 a day in criminal matters and permitted to make a similar charge per day in civil matters to be paid by the suitors. The Council then provided for the organization of a Court of Petty Sessions composed of one or more Justices of the Peace and a general Quarter Sessions of the Peace to be held every quarter. These civil courts followed the then English system, except that in the Colony they had unlimited jurisdiction - raising immediate problems due to the large amounts involved and the new Judges being without any legal experience. It became obvious to the Governor that the creation of a Higher Court of Justice was essential.

Consequently, a High Court of Justice was established by the Legislative Counsel without proper authority, September 23, 1853, and called "a Court of Common Pleas" to have jurisdiction in all civil suits up to $10,000.00. David Cameron, although not trained in the law, was appointed Chief Justice of the new court which, on being legally created May, 5, 1856, was renamed the Supreme Court of Civil Justice of Vancouver Island. In the result, from 1853 on, Magistrates and Justices of the Peace were restricted to matters of under $250.00 and their civil jurisdiction became in effect a Small Debts Court designed to handle petty suits in a less costly manner than that of the High

10. Howay & Scholefield - British Columbia - Vol. 1, p. 522

Court. This Court was modelled on "an Act for the More Easy Recovery of Small Debts and Demands in England, passed in 1846, the cornerstone of the English County Court system."[11] It was staffed by the officers of the Supreme Court and within its jurisdiction carried out a similar function to the latter. The District Court Act of 1866 extended the jurisdiction of the Court to the whole Colony for recovery of small debts up to amounts of less than $250.

On the criminal side, the Magistrates and Justices of the Peace dealt with misdemeanours, assaults, larceny, felony, desertion, selling liquor to the Indians and so on - 755 cases in 1860 which, considering the size of the population, was considerable.

The early Magistrates for the courts on Vancouver Island were generally well-to-do laymen because the island was relatively settled and the government could find responsible men who were prepared to work for little or no stipend; a situation which did not later pertain in the magisterial development of the Colony of British Columbia. In all, over the period until 1866, some 12 Justices of the Peace and two Magistrates were appointed for Vancouver Island - Augustus F. Pemberton, Police Magistrate for Victoria in June 1858, the first Magistrate to be appointed with legal training although not called to the bar, and W.H. Franklyn circa 1863 for Nanaimo.

That the citizens of Vancouver Island got what they paid for is portrayed in a letter from Governor Douglas to the Duke of Newcastle, January 8, 1861,

> "...I have made it a rule to select those local Magistrates from the respectable class of settlers, in compliment to them, as well as with the view of economizing the Public Revenue, which would be severely taxed by maintaining so many stipendiary Magistrates at a probable cost for each of 500 pounds a year; while the District Justices in performing the same duties with at least creditable efficiency, receive only one pound a day while in Session, as renumeration for their Services...."

The Mainland 1857-1858 under the Hudson Bay Company

Before 1857 the mainland remained as a fur trading Empire of the Hudson's Bay Company, and there was no development of a justice system. In that year, the discovery of gold on the Fraser provoked a rush of Californian miners, many of them very rough characters. Governor Douglas of Vancouver Island, as Chief Factor for the Company, was responsible for the administration on the mainland. There were then no representatives of authority in the area and it was clear that the influx from the South involved a real danger that the whole territory might be taken over by the Americans and an equivalent

11. 9 & 10 Victoria Cap 95

danger, because of the make-up of the American immigrants, of conflict with the Indian people similar to the unfortunate history in the United States.

To meet the emergency, in June 1858, the Governor, with or without authority, appointed various officials on the Lower Fraser including George Perrier, a Stipendiary Magistrate at "Hill's Bar" just below Yale, the first judicial officer appointed on the Mainland. Magistrate Perrier's appointment was not of long duration, he being suspended by Mr. Justice Begbie early in 1859 having been found unfit for office, the result of his part in the Ned McGowan War.[12] While the decision of the learned Justice was necessary, it has to be borne in mind that the problems facing Magistrate Perrier, with very limited resources, would have placed a heavy load on any magistrate. Mr. Justice Begbie obviously questioned the influence of Ned McGowan on the Magistrate but it is noted that after the settlement of the so-called "War", the Judge and Lieutenant R.C. Mayne, R.N., were wined and dined by the Californians led by McGowan - Mayne reporting that "I have rarely lunched with a better spoken, pleasanter party."[13]

Certainly, the first attempts at magisterial jurisprudence both on Vancouver Island with Dr. Helmcken and on the Mainland with Magistrate Perrier were not satisfactory - Helmcken, by reason of conflict of interest which he himself recognized, and Perrier for bad judgment although in retrospect possibly facing an impossible situation.

The difficulties that arose in each case did portray everything that is true today, namely, that any court must be manned by capable and honest judicial figures backed by an authority to enforce their rulings and all set in a frame that permits true judicial independence.

The Colony of British Columbia

The Act to provide for the government of the Colony of British Columbia passed August 2, 1858,[14] revoked the former Acts giving jurisdiction to the Courts of Upper Canada[15,16] and at the same time the rights of the Hudson's Bay Company were also cancelled and the administration of justice for the new Colony was organized along much the same lines as had been done for the Colony of Vancouver Island. James Douglas was appointed Governor with very wide powers with Mr. Justice Begbie to look after the judicial side. The departure of the Hudson's Bay Company and with it a conflict of interest so far as Douglas was concerned, together with a legally trained person in charge of justice, meant that the new Colony, after the swearing in of Governor and Justice in November 19, 1858, was in a

12. British Columbia Chronicle 1847-1871 - G.P.V. Akrigg & Helen B. Akrigg p. 145
13. Mayne - 4 Years in British Columbia's Vancouver Island p. 70
14. 21 & 22 Victoria Cap 99
15. 43 George III Cap 138
16. 1 & 2 George IV Cap 66

far better position to evolve from the point of view of judicial administration than had been the Colony of Vancouver Island. Measures for the administration of justice were planned and taken by Judge Begbie, who also held the office of Attorney General until 1863, the system of Magisterial Courts being part of the whole. An important difference in that system as compared to Vancouver Island was that on the Mainland at that time prominent and respectable citizens who would work for free were not available and, consequently, responsible men were imported and appointed Stipendiary Magistrates.

As "gold" was the operational word for the founding of the new Colony, regulation of the gold fields was essential[17] and the office of Stipendiary Magistrate was generally simply another task for the Gold Commissioner along with Commissioner of Lands, Revenue Officer, Coroner and any other duty the government could conveniently assign - a practice which found its way down to as late a date as 1974[18] when the position of the Government Agent to include that of Magistrate was finally discontinued. Certainly, sitting as Magistrate, these men who, from time to time wore other hats, could be suspected, rightly or wrongly, of conflict of interest, particularly where government matters were involved. At least with the assignment of these multifarious positions, the Stipendiary Magistrate was, for the times, well paid.

On the civil side, the British Columbia Small Debts Proclamation of December 10, 1859, provided that designated Magistrates were to have the same powers as the County Court Judges in England and were so called - their jurisdiction being up to $250.00. This situation continued after Union in 1866, through Confederation in 1871, and until 1881 when Section 96 (i.e. federally appointed) judges assumed that responsibility with, of course, an altered jurisdiction. Something of the story of these Magistrates, named County Court Judges, and how they were done out of their promised pensions after Confederation is related in the Advocate.[19] Thus for 22 years, the Magistrate's Court on the small debts side and the County Court of today had a common ancestry. The Judges were all laymen with the exception of A.C. Elliot who was the first lawyer Magistrate.[20]

On the criminal side, the jurisdiction of these stipendiary Magistrates was the same as that of their counterparts on Vancouver Island which included jury trials[21] where there was little criticism of their work. Aside from the capabilities of the men themselves, they obviously drew much of their strength from the leadership and inspiration of Mr. Justice Begbie who was no annointed staff officer resting comfortably behind the lines but very much in the trenches carrying

17. Gold Fields Act 1859
18. Vancouver Sun, Thursday March 21, 1974
19. A - V. 26 p. 245
20. A - V. 30 p. 237
21. A - V. 27 p. 21

out the necessary judicial tasks and suffering the same vicissitudes that the wild country laid upon the Magistrates.

Chartres Brew, policeman, gold commissioner and Stipendiary Magistrate from Corofin, County Clare, came to British Columbia after service in the British Army and the Royal Irish Constabulary. He was, after Mr. Justice Begbie, one of the most important figures in the administration of justice in the Colony of British Columbia. He recruited from the Old Country most of the Stipendiary Magistrates who served so well in those times. Many of them were, like Brew, ex-army officers who would have a certain professionalism, courage and ability to command, all essential attributes operating as they did on the frontier and with a minimal police force. Indeed, in many instances, they combined the duties of Magistrate with those of Police Officer, much as the R.C.M.P. did in the Arctic not so many years ago -not a desirable situation, but necessary enough in the circumstances that prevailed.

Union of the Colonies, 1866-1871

After the Act of Union which received Royal assent August 6, 1866, "an Act for the Union of the Colony of Vancouver Island with the Colony of British Columbia,"[22] there was much dispute between Chief Justice Begbie of the Colony of British Columbia and Chief Justice Needham of Vancouver Island as to who should be the Chief Judge of the amalgamated colonies. This problem was solved by "the Supreme Court Ordinance Act, 1869" and the "Courts Merger Ordinance Act, 1870." In 1870, Chief Justice Needham became Chief Justice for Trinidad and Chief Justice Begbie assumed the position of Chief Justice of British Columbia. While this dispute raged in high places, the Magistrates Courts on the criminal side carried on much as before. Similarly, on the civil side, a general system for the united colony was established by the County Court Ordinance of 1867 with the Governor to have power to appoint Magistrates and Justices of the Peace to be County Court Judges with jurisdiction up to $500.00 although claims over $50.00 in value could be removed to the Supreme Court if the plaintiff desired. Finally, also in 1867, Ordinance No. 7 assimilated the general application of English criminal and civil law over the whole Colony and thus the colony wound its way toward Confederation in 1871 which brought with it different laws and different problems for the Magistrates' Courts.

Some of the Magistrates

The foregoing is but a brief sketch of some of the legislation providing for the Magistracy of the two Colonies and later the United Colony until 1871. It is not possible here to treat in any detail with the

22. 29 & 30 Victoria Cap 67

Magistrates of those Courts. Some but not all of them can be mentioned.

Magistrate Warner Reeve Spalding originally served with the Mounted Police in Australia, then with the British Army in the Crimea, coming to British Columbia in 1859. He was the first Magistrate appointed in New Westminster April 24, 1859, then to Quesnel Mouth, the Cariboo and finally to succeed Magistrate Franklyn in Nanaimo. Interestingly enough he is credited with introducing California quail into British Columbia.[23]

Magistrate Henry Maynard Ball, commissioned in the North Devonshire Regiment of Foot, 1843, was a Magistrate in Australia, coming to British Columbia in 1859. He sat as Magistrate at Lytton, Kootenay, Quesnel Mouth and the Cariboo. He had a good sense of humour as demonstrated when, being asked by the Sheriff if a Juror could have a glass of water, replied, "Water! Water! Well it isn't food, that's sure; I will certainly not call it drink. Let him have it, Mr. Sheriff."[24]

Magistrate Peter O'Reilly of County Meath, Ireland, a lieutenant in the Royal Irish Constabulary, was appointed Stipendiary Magistrate in Langley, April 15, 1859, and he followed the gold fields to Similkameen, the Cariboo, the Kootenay, the Big Bend District on the Columbia River and finally the Omineca where he made a winter trip down the Skeena and Nass Rivers, very nearly losing his life. He it was, on arriving and confronting an unruly mob in the Kootenays who stated, "Now boys, there must be no shooting, for if there is shooting there will surely be a hanging." He is remembered as a popular and generous man, a lover of outdoor life and a fine judge of horses.[25]

Magistrate William George Cox, also from Ireland, was appointed to Rock Creek in the Similkameen District in 1860. He was obviously something of a character. (Alas no portrait of him can be found.) On one occasion, he related to a friend the custom of the Chinese oath made by cutting off the head of a chicken and, on being asked what happened to the carcass, replied, "It becomes the property of the Court, why, it was the only chance I had of getting a fresh chicken dinner." On another matter, Magistrate Cox, having reserved judgment until the following Monday, casually told the loser that he had intended to find in his favour but "the effects of a champagne supper to which I was invited by the plaintiff over the weekend cause me to change my mind."[26] He suffered criticism at the time of the Waddington Massacre, basically for not more actively chasing the Chilcotins.[27]

23. A - V. 27 p. 23
24. A - V. 27 p. 76
25. A - V. 27 p. 78
26. Reminiscences of Dr. John Sebastian Helmcken p. 235
27. British Columbia Chronicle 1847-1871 - G.P.V. Akrigg & Helen B. Akrigg p. 145, Discovery Press 1977

However, Cox was obviously very much his own man and it may well have been that he was of the view that as the Waddington massacre had resulted from the carelessness of those involved in not taking proper precautions, there was not much point in Cox endangering himself or his small civilian force in the same way. He may have had a point because one member of the party, Donald McLean, who did not agree with the leader's policy, slipped away to score on his own and got himself killed.[28] Indeed, in the end, the sought after Indians surrendered themselves to Cox, August 15, 1864, thus ending the Chilcotin uprising.

His magistracy came to an end in 1868 after an incident in the Legislature of which both he and Magistrate Franklyn of Nanaimo together with several other Magistrates were members. Magistrate Franklyn, who had had a drop of the "creatur," was reading a rambling speech on the desirability of New Westminster becoming the capital of British Columbia. He laid his glasses down to emphasize a point and the irrepressible Magistrate Cox, sitting beside him, pressed the lenses out thus ending the speech and apocryphally, also New Westminster's bid.[29]

It is related that Governor Seymour, obviously not a strong believer in tenure, was unhappy with both Magistrates and their commissions were revoked a short time later.[30]

Magistrate Augustus Frederick Pemberton of Clontarf, Ireland, was appointed Police Magistrate for Victoria in 1858. He was the first legally trained Magistrate in British Columbia, although not called to the bar, and also the first Stipendiary Magistrate for Vancouver Island.[31] He held office as Magistrate and County Court Judge until 1881. On one occasion, he came under fire by a group of drunken Indians and pacified them, telling them that, if they did not stop, he would take them to the Skookum House. A man of strong character, he had occasion to order the arrest of the then Attorney General, G.H. Carey, for accepting a challenge to a duel.

John Carmichael Haynes from County Cork, Ireland, was liked and respected as a constable and Magistrate throughout the Penticton/ Kootenay area between 1864 and 1888. Tough enough, he grappled with and disarmed an Indian in his own court who was obviously intent on killing the Judge. An expert horseman, as all magistrates had to be in those days, he invariably appeared in Irish tweeds, coat, riding breeches - his horse well groomed, tail docked and bridle and bit polished to a shine.[32]

28. British Columbia Chronicle 1847-1871 - G.P.V. Akrigg & Helen B. Akrigg p. 304, Discovery Press 1977
29. Reminiscences of John Sebastian Helmcken p. 231
30. Executive Council Minutes, November 16, 1868
31. A - V. 27 p. 133
32. Article by Arthur W. Gray

Magistrate Andrew Charles Elliot, born in Ireland, was called to the bar at Lincoln's Inn 1854, was appointed a judge of the Small Debts Court for Yale and Hope in 1859 (the first qualified lawyer to be so appointed to any magisterial position in what was to become British Columbia), then named a Stipendiary Magistrate for Lillooet in 1861 and Police Magistrate for Victoria in 1871. (For portrait, see those of Attorneys General on page 34.)

In due course, he went into politics and in 1876 became the 4th Premier of British Columbia, also holding the position of Attorney General and Provincial Secretary.[33] He died 1889 and the Victoria "Colonist" reported, "He administered justice with a fearless hand and soon had discordant elements well in check. He was a genial, whole souled gentleman of generous impulses and possessed the highest kind of honour. He was brave to a fault."

General

The reader perhaps can capture from the foregoing short sketches something of the worth of these early progenitors of the Provincial Court. Perhaps their value can best be summed up in the dispatch from Governor Seymour to the Colonial Secretary, February 17, 1866, "The representative of the Government, the sole Referee or Judge in mining disputes, Gold Commissioner, Bankruptcy Commissioner, County Court Judge - the Magistrate is constantly before the public. The smallness of the police force which we can allow to carry out his decisions and to preserve tranquility compels him to rely much on his personal influence. It gives me great satisfaction to say under these circumstances a body of public officers had been trained, equally respected by the people and the government."

It is difficult for us in today's comfortable pew to visualize the problems of the administration of justice along a wild frontier inhabited by an Indian people understandably resentful of the white and often callous invader, and on the other hand, by the white men, in many cases equally or more dangerous, the majority of them the products of the wild days of the California gold rush and generally resentful of British rule. The then situation is portrayed as well as any in the so called "Ned McGowan War," which although labelled as comic opera did in fact give a vivid indication of the forces abroad and the very real dangers then pertaining.

In this arena, the magistrates perforce operated on their own initiative without possibility of communication or consultation, criticized if they made mistakes while correct actions were accepted without comment because that was the way they were expected to act. The roots of the Provincial Court lie there - a tradition to be admired and cherished. "Wherefore are Magistrates ordayned but that the tranquillitie of the commune weal may be confirmed."

33. A - V. 30 p. 237

Some Pre-Confederation Magistrates

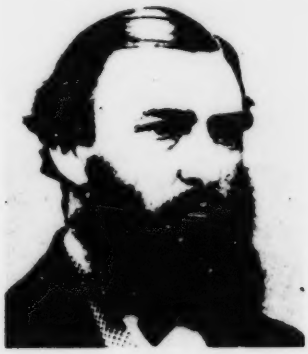
Magistrate Warner Reeve Spalding
1859 - 1881

Magistrate Henry Maynard Ball
1859 - 1881

Magistrate
Peter O'Reilly
1859 - 1881

Magistrate
Augustus Frederick Pemberton
1858 - 1871

Magistrate John Carmichael Haynes
1864 - 1867



Magistrate Chartres Brew
1859 - 1870

2. Something of the Interregnum, 1871 to 1947

The Coming of the Juvenile Court, 1910 — Adult Probation, 1940 — The Wood-Stevens Survey, 1943 — The 1st Magistrates' Conference, 1947

It might have been expected that with the arrival of Confederation great changes could take place in the Magistrates' Courts. In fact there was little change until after the turn of the century.

The criminal Ordinances governing the Colonies of Vancouver Island and British Columbia and later the combined Colony of British Columbia were based on the English common law as adapted to local conditions, consolidated in the revised Statutes of British Columbia, 1871 and the various federal statutes which became effective in British Columbia that year were similarly based. After that and until 1892 there was a series of federal statutes consolidating previous colonial laws, brought together in the Criminal Code of Canada 1892[1] to include both indictable and summary conviction offences. In addition, each province provided legislation for breaches of its own Acts and regulations.

The 1892 Code continued the authority of the Justice of the Peace and for certain jurisdictional matters two Justices of the Peace sitting together and at the same time recognized that any Police Magistrate, Stipendiary Magistrate appointed for a territorial division and every Magistrate authorized by the law of the Province in which he acts could do alone what was otherwise required of two Justices of the Peace. This was to apply to summary trials of indictable offences. One Justice of the Peace had jurisdiction in summary conviction matters. The necessary amendments were made in British Columbia to meet the requirements of the 1892 Code.

Over the period and still occurring appear the jurisdictional disputes between Federal and Provincial governments and yet to be determined are the precise effect on our laws of relationships vis-a-vis the Old Country on one hand and the Americans on the other.[2]

Also to be noted is that writers of our early magisterial history used the term Magistrate and Justice of the Peace interchangeably. Over

1. 55-56 Victoria, Cap. 29 and see Martin's Criminal code, 1955, pages 771 and 1030
2. Law Enforcement in Nineteenth-Century British Columbia - A Brief and Comparative Study - Hamar Foster - #63 B.C. Studies, p. 3.

the years there were, of course, changes in authority for these judicial figures and the matter of precise definition became essential with the changes in jurisdiction brought about by the 1955 Criminal Code and the clarification of the duties of Justice of the Peace after the Provincial Court Act 1969.

Examination of some of the Police Court record books, early 1900, reveal that the Magistrates of those days carried out their duties much as their predecessors had done before Confederation. Indeed this writer can testify that, when he commenced practice upcountry in 1935, the magisterial system had not greatly changed and was still recognizable as the same system as at the turn of the century and historically apparently much the same as at the time of Confederation. In other words, through this interregnum the Magistrates continued to do "their thing".

The first real change occurred in the area of the Small Claims Court. This jurisdiction had been given over to the County Court as related in the previous chapter but the number of Judges proved inadequate for the work load. Accordingly in 1886 a Small Debts Act was passed to be withdrawn in 1890 on constitutional grounds the Federal Government agreeing to appoint four more County Court Judges. It was soon found that the new appointees still could not cope and accordingly the Small Debts Act 1895 was legislated, not very different, except as to jurisdiction from the Small Claims Act of today. A well documented examination of the background history and purpose of this court is contained in an essay by C. Anthony Wilson.[3]

An amusing comment appears in the debate on the Bill. The Attorney General had proposed an amendment that a lawyer's fee be allowed. The proposal was defeated, one of the members, Mr. Cotton observing, "The Attorney General has made a plea for the young lawyers, but he (sic Cotton) as a layman, refused to be used as chaff to be thrown out to young chicks. Besides, the fee might tend to scatter the young luminaries like tuberculosis or smallpox".[4]

In any event, the Small Debts Act was perhaps a harbinger of change which presaged an awakening of the social conscience of Canadians around 1910.

This came about in the perception of the need for improvement in the approach to juvenile delinquency which in turn led to probation for the young adult offender and through then unperceived channels to entirely new concepts in the methodology of treatment of criminals. All these factors one way and another had the effect of raising the expectations of the public of the Magistrates' Courts and causing introspective examination of performance by the Magistrates themselves.

3. Some Observations on Small Claims Court by C. Anthony Wilson - Faculty of Law, University of Victoria, 1984.
4. Victoria Times, November 29, 1894.

The history of the juvenile court system in Canada commenced nine years after the founding of the first Juvenile Court in Chicago, U.S.A. with the passing of the Federal Juvenile Delinquents Act proclaimed in 1908[5] drawn by Mr. W.L. Scott K.C. of Ottawa. This Act superseded the sections of the Criminal Code relating to offences committed by children under 16 years of age which, with minor exceptions, had basically treated them as adults.

British Columbia passed a Juvenile Court Act in 1910[6] sponsored by Attorney General W.J. Bowser K.C. and the Federal Act was proclaimed for Vancouver and Victoria, Vancouver being the first to establish a Juvenile Court June 18, 1910,[7] the second in Canada. It was situated in an old house at Pine and 10th which served as a courtroom, detention home and school, the school officially known as the 14th Division of Fairview Public School. The first sitting was held June 23, 1910 before Judge A.E. Bull whose son, the Honourable E.B. Bull, Q.C., later sat in the British Columbia Court of Appeal. His Honour was also a Magistrate for the City of Vancouver, sitting as a juvenile judge at the detention home once a week. The court was complete with a probation officer, Mr. H.W. Collier, a matron, Mr. Collier's wife, and a Juvenile Court Committee composed of equal numbers of Roman Catholics and Protestants. Judge Bull's first year end report, December 31, 1910, is something of a classic illustrating not only that basic human values do not greatly change but also containing the first suggestion of an adult probation service. Some excerpts are as follows:

"The little fellows are usually very penitent, and after a serious talk with them I lay down a line of conduct for them to follow, and put them on probation, directing them to report to the Chief Probation Officer once a week. The Probation Officer endeavours also to see them at their homes once a week, and thus keeps in close touch with their progress.

Sometimes I find the parents are not free from blame for the downfall of the child, and in these cases, after sending the child out of the room, I endeavour to show the parents wherein they have contributed to their child's delinquency. Sometimes it has been necessary to speak very plainly to careless or too indulgent parents, and to severely arraign those parents whose habits are loose and dissolute, and to warn them that if some improvement is not made that punishment by fine or imprisonment awaits them as provided by the Juvenile Courts Act." —

"The probation system might with advantage be extended in some cases to first offenders over the age of sixteen years (Author's italics). Sometimes a man or woman under great provocation without due consideration of the seriousness of the matter, or of the consequences,

5. Cap 40, Statutes of Canada, 1908
6. Cap 10, Statutes of B.C., 1910
7. City of Vancouver, first year-end report of the Juvenile Court and detention home

will commit the first offence, and imprisonment for even a short period will perhaps be the ruin of that man or woman's life, or the imposition in the case of a married man of untold hardship and misery on the dependent wife and innocent children. Sometimes if first offenders were put on probation and directed to report to the Chief, or Deputy Chief of Police, once a week or so instead of being sent to gaol and their families supported by charity, the offenders might become honorable men and good citizens."

While the inception of the Juvenile Court in Vancouver was but a small step in the total justice system, nevertheless it was a start away from the lethargy of the post Confederation period.

Unfortunately, because the early Juvenile Court was regarded as an arm of the police court, it gradually slipped away from the intention of the 1908 Act and was not redirected to its original purpose until 1917. In that year, Judge Helen Gregory MacGill was appointed to share the work with Judge Henry C. Shaw of the Magistrate's Court in Vancouver who had taken over from Judge Bull.

The first woman judge in any court in the Province more than made up for her lack of legal training with her drive and her concerns not only for the juvenile but for family affairs generally. She initiated much of the thinking which led to the Juvenile Court Act of 1918 sponsored by Attorney General Farris which extended the jurisdiction of the Juvenile Court throughout the Province providing for the appointment of ad hoc judges for individual cases and retroactively enacting that a woman could sit as a Juvenile Judge.[8] She continued an innovative approach throughout her long career sharing the work with the Magistrate from the Vancouver Police Court on the basis that she dealt with the girl delinquents, he with the boys.

Her problem was that, before and during her tenure, she did not hesitate to use political means, she being a Liberal, to put forward matters which she considered essential reforms for the Juvenile Court. Her political activities did not go unnoticed and consequently, in 1929, under a Conservative Government, the then Attorney General R.H. Pooley K.C., all magisterial appointments being rescinded and re-issued at the time of the amalgamation of South Vancouver and Point Grey with Vancouver, did not reappoint Judge MacGill. Edith Paterson, a lawyer and a good Conservative, was appointed in her place. There was then a first class row, the first demonstration in our history of public awareness of the need for judicial independence, the press saying "a mass operation of machine politics - an inexcusable attack on the judiciary - that the Attorney General had the power to dismiss but not the moral right - that the judicial principle of life tenure must obtain". It was not until the Liberals re-emerged in 1934 that the

8. Statutes of B.C. - 1918 - Juvenile Court Act S2 SS3(1)

judicial intrusion by government was repeated in the dismissal of Judge Paterson and reappointment of Judge MacGill by Attorney General G. McG. Sloan K.C. Neither wrong made a right. Judge MacGill carried on until she retired in 1945, contributing much not only to the Juvenile Court system but urging its expansion into a Family Court to consider domestic relations across the board.[9]

Late in 1934 Attorney General Sloan intruded again into the Vancouver Magistrates' Bench, this time at the request of Mayor G.G. McGeer, dismissing without reason given, Magistrates W.M. McKay and J.A. Findlay.[10]

Magistrate H.S. Wood, later Mr. Justice Wood, sat in the Juvenile Court on a part time basis from 1935. This was a fortuitous appointment, the knowledge there gained awakening Magistrate Wood's interest in the juvenile delinquent on a provincial wide basis and it was an offshoot of that interest that brought about the original Conference of Magistrates.

He also was the first "experimenter" with adult probation again from his experience in Juvenile Court and indeed with J.P. Hogg, Q.C., father of the late Judge Gilbert Hogg, drafted the original Probation Act which was enacted in 1946, the Attorney General the Honourable R.L. Maitland, Q.C. As Magistrate Hall of Victoria put it, "Probation is the greatest step in the improvement of justice that we have had."[11]

The whole story of the development of Probation and Borstal (New Haven) is a history in itself carefully documented in a manuscript written by Mr. E.G.B. Stevens, 1977, he being the first Provincial probation officer originally called "follow-up officer".

An important decision was taken in 1943 when, at the instance of Magistrate Wood, Attorney General Maitland commissioned a survey of the Magistrates' Courts in British Columbia dealing with juveniles and young offenders. Magistrate Wood and Mr. E.G.B. Stevens were requested to carry out the survey.

Armed with a Government grant of $500 and a direction to the Commissioner of B.C. Police to see them ferried from one Provincial police detachment to another, the pair set off and over the course of the next two months interviewed 99 magistrates and ad hoc Juvenile Court Judges throughout the Province.

"The Vernon News, June 3, 1943
Magistrate H.B. Woods Confers With Valley Court Authorities

Magistrate H.B. Woods, travelling the Province with regard to matters of juvenile delinquency, visited Vernon last week. He met in Vernon City Police Court with Magistrate William Morley, Ver-

9. 1928 - Laws for Women and Children by Helen Gregory MacGill
10. Daily Province, December 29, 1934, January 5, 1935
11. 1953 M.C. p. 103

non; Magistrate D.M. Robertson, Salmon Arm; Stipendiary Magistrate J.Z. Parks, Armstrong; and Stipendiary Magistrate H.C. Catt, Lumby.

The object of the meeting was to bring about greater co-ordination between the courts and to find a method of achieving this goal. Mr. Woods suggested that interior magistrates should meet regularly to discuss mutual problems. E.G.B. Stevens, Probation Officer from Vancouver, attended the meeting."

From the past pages it will be appreciated that Magistrate Wood played an important part in early developments. He was appointed Deputy Magistrate for Vancouver in 1935, Senior Magistrate in 1943 and went to the Supreme Court Bench in 1947. That Magistrate Wood was very much alive to the problems of the Magistrate's Courts is illustrated by his awareness, even in those early days, that the public tended to associate the courts with the police and, on being made Senior Magistrate for Vancouver in 1943, he had the inscriptions over the courtroom entrances changed from "Police Court" to "Magistrate's Court", an action taken some light years ahead of his time.[12]

Certainly the courts of New Westminster, Vancouver and Victoria from the very early days and particularly from their magisterial makeup during the years of the Magistrates' Conferences had much to do with the growing perception of need for improvement in the Magistrates' Courts generally throughout the Province. A whole history could be written of them.

In this connection mention must be made of Magistrate Oscar Orr,

Magistrate Oscar Orr

Retired 1962, soldier, prosecutor, Magistrate and a gentleman - a freeman of the City of Vancouver.

12. 1950 M.C. p. 30

a pre-eminent judicial figure in any company. Not only did he serve his Court magnificently but through the years gave unreservedly of his knowledge to all Magistrates at the Conferences. His delivery at such meetings were models of legal expertise allied with common sense. With it came a dry sense of humour - when one conference got on the subject of prosecutions for bootlegging Magistrate Orr noted that "in those days the City Council were officially against bootlegging — any afternoon, however, you might find some of them unofficially!"

The Wood-Stevens survey overran its terms of reference in the sense that, while limited to juveniles and young offenders, it became a valuable indicia of the general condition or lack of condition of the Magistrates' Courts at that time and many of the recommendations in the final report served to create the essential atmosphere of change. Much credit must go to Magistrate Wood and Mr. Stevens. Some excerpts and comments:

- "We found that in most places there was no real programme of probation and no probation officers and in some places even the word was new to those concerned"[13] — "in every district where there is any considerable amount of work in this field (six ad hoc Juvenile Court Judges), permanent appointments be made,"[14] — and shades of early diversion, "very often young offenders can be brought in and reprimanded by the probation officer and/or brought before the Juvenile Court Judge without a formal charge being made"[15] — "there should be an appointee, a Provincial probation officer to appoint, to assist and advise and from time to time visit the magistrates and probation officers"[16] — "that the probation service for senior courts be extended throughout the Province"[17] — "that there should be some form of annual returns so far as juveniles were concerned"[18] — in respect to home conditions "the difficulty of releasing a boy or girl is not because of anything the child has done or has failed to do but because he may be returning to a home the nature of which has been the cause of his delinquency"[19] — "that some other remedy be devised for taking care of Indian delinquents rather than sending them to industrial schools"[20] — *"that regional conferences of magistrates and Juvenile Court Judges should be held* (author's italics) a) at the coast, b) in the Okanagan and c) in the Kootenays."[21]

13. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 3
14. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 6
15. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 7
16. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 7
17. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 8
18. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 9
19. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 15
20. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 17
21. Report on Magistrate's Courts dealing with young offenders - June 25, 1943 p. 23 #6

Mr. Stevens, being interviewed October 24, 1984, put the plight of the Magistrate very clearly. Question "Did they want to get help?" Answer, "They did. Well you can imagine, there may be a farmer in Quesnel, or a real estate agent somewhere in the Kootenays, or a chap who is the secretary of a sawmill out in Haney - these people, they were well intentioned people who were willing to provide the public service but they weren't getting too much help in any way and they didn't know anything about it much and most of the help would be from the police. So these men were anxious to get together and talk over their problems."[22]

The Magistrates' Conferences, originally suggested by Magistrate Wood, commenced in 1947, an earlier conference of Okanagan judges unfortunately unreported, taking place a year or two previously.

Thus it can be fairly said that the inception of the Juvenile Court in 1910 in Vancouver brought in its train an understanding of the potentials of probation for young offenders on the part of the Magistrates of the Criminal Court of Vancouver and the subsequent development of a Province-wide probation system. The consequential continued interest in both juveniles and young offenders leading to the survey of 1943 and many recommendations, the most important of which resulted in the commencement of the Magistrates' Conferences providing the first semblance of directed legal education for Magistrates, of collegiality between them and beginning the process of bringing home to both Government and Magistrate a perception of the need of an atmosphere more conducive to an independent knowledgeable judiciary.

The first reported Conference was in fact a convention of magistrates and probation officers of the Lower Mainland and Vancouver Island held at Vancouver, January 30, 1947. It was opened by the Honourable Attorney General, Mr. Wismer who stated, "such meetings — should be an annual affair — most important for the dissemination of ideas, discussion of problems so that all will be better equipped to administer justice."[23] That there was a need for emphasis on independence was probably best exemplified at that conference when James Cunningham, the then Game Commissioner, blandly advised the assembled multitude "if any magistrate feels that the circumstances of a charge under the Game Act is not in order, delay judgment until there is an opportunity to communicate with the department of the Attorney General, and the Game Commission will be only too willing to co-operate."[24]

This first conference was the result of the Juvenile Court Act 1910

22. Interview with Mr. E.G.B. Stevens October 24, 1984
23. Convention of Magistrates and Probation Officers of Lower Mainland and Vancouver Island, January 30, 1947 p.1
24. Convention of Magistrates and Probation Officers of Lower Mainland and Vancouver Island, January 30, 1947 p.8.

and the resulting actions of many people particularly Attorneys General Bowser, Wismer and Maitland, Magistrates Bull and Wood, Judge MacGill and Mr. Stevens. Now the Magistrates' Court was in a position to begin a purposeful and gradually accelerated movement toward the Provincial Court as we know it today.

Pioneer Justices of the Peace of the Okanagan (Circa 1890)

Left to right - standing: C. O'Keefe (Okanagan), M. Lumby (Spallumcheen), L. Girouard (Priest Valley), C. Crozier (Spallumcheen); sitting: E.J. Tronson (Priest Valley), B. Lequime (Okanagan), F. Brent (Okanagan), I. Boucherie (O.K. Mission), T. Ellis (Penticton).

The original Juvenile Court, School and Detention Home for Vancouver at Pine Street and Tenth Avenue, 1910.

Magistrate A.E. Bull
Vancouver Criminal Court
First Judge of the Vancouver
Juvenile Court 1910

Judge Helen Gregory MacGill
First lady Judge in British Columbia
Judge of the Vancouver Juvenile
Court 1917 - 1929 and 1934 - 1945

Magistrate H.S. Wood, 1934 - 1947
(later the Honourable Mr. Justice
Wood) closely associated with the
origins of both probation and the
Magistrates' Conferences

Mr. E.G.B. Stevens
The "father" of the probation
system and later Provincial Director
of Corrections

3. The Beginnings of a New Era, 1948 to 1954

Problems of the Magistrates — The new approach to the problems of criminality — "Or else" — Early views on the status of the lay Magistrate and his capability — Legal aid — The Department advising Magistrates — Reliance on the policeman prosecutor — Advent of the Law Faculty graduates to the Department

By 1948 the war had been over for three years, the Law Faculty at U.B.C. had graduated its first class, the Magistrates' Conferences had promoted a process of introspective thinking among the Magistrates themselves, legal aid was being talked about, great changes were taking place in the penal system and society generally was beginning to question previously acceptable standards in practically every area including justice, urbanization was rampant and mass communications were drawing together all sectors of the Province.

The Magisterial Courts of the Province were comparatively ill-prepared for the onslaught. While a few of the larger urban centres enjoyed the advantage of legally-trained Magistrates, this was not so for the bulk of the Province lying in unorganized districts, the Department, since Confederation, accepting the situation as a fact of life. Furthermore, the lay Magistrates who sat in the latter areas were completely untrained and without the most elementary source material to assist them in their judicial functions. This was true of the Criminal Courts generally and even more noticeable in Small Claims and Juvenile Court. This was particularly so in the latter, its purview being extended in 1943[1] to constitute a "Family Court," the Judges thereof receiving their jurisdiction under the Magistrates Jurisdiction Act.[2] It was true enough that lay Judges brought common sense and knowledge of the community to their deliberations but as will be seen, those advantages tended to be overcome over the years ahead by a vast expansion in the laws, much of it of a very technical nature which demanded not only the attributes mentioned above but, in an increasing number of cases, legal training.

There is no doubt that, from the earliest days, the great majority of the Magistrates felt keenly the disadvantage that they laboured under in dispensing justice as opposed to their urban counterparts. At the

1. Juvenile Court Act S.B.C. 1943 S.2
2. Magistrates Jurisdiction Act S.B.C. 1943 S.1

1948 conference Magistrate R.L. Haig-Brown of Campbell River, addressing the fact that no probation officers were there available, said "I want to speak for the underprivileged nine-tenths of us."[3] He went on to mention the greater difficulty he had in adequately dealing with juvenile matters than, for example, the Courts in Victoria which had the necessary assistance. Accommodation was atrocious. Magistrate Washington of Parksville noted that "— In my little courtroom — if I have any more than one witness — they have to go out and sit in the car"[4] while Magistrate Drake of Burns Lake said that "I sit in the Mounted Police office behind a desk that looks worse than most packing cases down on the floor. It does not add any dignity at all — then somebody comes in and says, 'I want a dog licence.' — then the phone rings — 'this is the R.C.M.P.'"[5]

And of course, not only administrative assistance was required; as Magistrate Wood pointed out, "Wherever we went the Magistrates and Judges were anxious to talk to someone else about their problems and it was obvious that they had little opportunity of doing so. They were all desirous that some scheme should be adopted for periodic conferences."[6] At the same conference, Chief Justice Sloan, a former Attorney General, stated, "When a Magistrate is appointed, he is given the commission in one hand and a code in the other and left to his own devices."[7]

All this has to be considered against the vast changes which were beginning to sweep the justice system. These stemmed in good part from the 1936 Royal Commission on the Canadian Penal system which recommended changes in methods of treatment of offenders from retributive, punitive and purely custodial to reformative, rehabilitative, constructive and humane measures. While many will argue as to the validity of these concepts or that they went too far, the important thing from the Magistrates' point of view is that their coming had vastly changed the whole concept, outlook and demands on the judge by the justice system. An illustration of this, in one area alone, were the amendments to the Prison and Reformatories Act in 1948 which enabled the Magistrate to sentence adult male young offenders direct to New Haven for an indeterminate period (not to exceed two years less a day) following on a minimum definite sentence of at least three months.[8] It later became a controversial sentence which for many reasons, good and bad, has now passed into limbo. But it did, at the time and for some years, provide the judge with a whole new outlook and new sentencing problems so far as young male offenders were

3. M.C. 1948 p. 36.
4. M.C. 1953 p. 50
5. M.C. 1953 p. 51
6. M.C. 1950 p. 30.
7. M.C. 1950 p. 56.
8. M.C. 1951 p. 11.

concerned, challenges which the lay Magistrate was ill-prepared to meet.

Similarly there was in train a vast flood of new laws, Federal and Provincial, and accompanying regulations not to mention Municipal bylaws, all requiring people to do or refrain from doing something "or else" and as Magistrate H.C. Hall of Victoria put it, "and that was being passed on especially the 'or else' part to the Magistrates."[9] Finally, to accent the problems in 1950, legal aid formally arrived on the scene ensuring, to a much greater extent than before, that people who could not afford a lawyer were properly represented in Court, a socially desirable attainment but inevitably a more time consuming and legally demanding process.[10]

That this evolving situation with its additional demands on the presiding Judge was raising eyebrows in legal circles was demonstrated in an address by Angelo E. Branca, K.C., later The Honourable Mr. Justice Branca to the Magistrates' Conference, 1951, where he suggested, in view of the extraordinary growth in justice matters, that professional Magistrates should be appointed.

"You see, there is a difference between justice according to law and justice according to your ability — if there is a mistake, for example in the taking of evidence, justice isn't done according to law — if the client hasn't the money to appeal, then an injustice results — the difference is the purse of the client."[11] Thus did Mr. Branca put rather succintly a major consideration concerning the desirability of legally trained as against lay judges as it related to the general welfare of the public.

The matter was to be finally solved by the all professional Bench in 1975. But the following notes indicate that the concerns were not new. On the civil side in 1873, the Attorney General, indicating that the lay County Court Judges, i.e. Magistrates, should "be pensioned off and that the six vacancies should be filled by three professional men"[12] and the minutes of a meeting of the Benchers of the Law Society in 1875 set out "that the retention of the present non-professional incumbents on the County Court Bench has produced much inconvenience, uncertainty and delay in the administration of justice and destroyed the public feeling and confidence in those tribunals."

On the criminal side the 1892 Criminal Code saw an increased jurisdiction for Magistrates "to get rid of the expense of maintaining a prisoner for a long term in gaol or keeping an innocent party who may have been accused for a long period before his trial began; and so the trial was allowed to take place before a Magistrate."[13]

9. M.C. 1951 p. 33.
10. History of the Legal Profession in British Columbia by A. Watts p. 139.
11. M.C. 1951 p. 156.
12. A. V.26 p. 247
13. Tremeear 2 Edition, Canada Criminal Law and Criminal Evidence p. 2

Their authority was again extended in 1932. Such increases to jurisdiction was not palatable to all and in 1948 a further amendment to the Criminal Code was passed. "That revision did away with the absolute jurisdiction of Magistrates and provided for an election in every case within the part but it met with such vigorous opposition from county councils and other municipal bodies presumably because of the increased cost of custodial requirements that it was never brought into force."[14]

Thus while there were occasional changes in jurisdiction there was for a long time virtually no change in the concept that the Magistrate with no training at all could preside in both civil and criminal matters in the small communities scattered through the Province.

That this was an acceptable situation for the times is implied in a reference in 1938 before Duff C.J.[15] concerning the authority of Magistrates to perform the functions vested in them under certain Ontario Statutes, the Children's Protection Act, etc.

His Lordship, on considering the suggestion that judges appointed under S 97 B.N.A. Act should, similarly to the Section 96 appointees, be selected from the bars of the respective provinces had this to say, "That the statesmen responsible for Confederation could in fact have contemplated such a restriction upon the appointment of Magistrates and Justices of the Peace, i.e. that all Magistrates should have legal training, would be a supposition that nobody having any knowledge of the circumstances of the country would countenance."

At a later point the Chief Justice addressed the argument that justice would suffer if all judges were not in the control of federal authority under the B.N.A. Act.

His comments were a compliment to the Magistrates' courts of the day but also a reminder of the heavy responsibility they bore -

— "Throughout the whole of this country Magistrates daily exercise judicial powers of the highest importance in relation more particularly to the criminal law but in relation also to the vast body of law which is contained in provincial statutes and municipal bylaws. The jurisdiction exercised by those functionaries speaking generally touches the great mass of the people more intimately and more extensively than do the judgments of the Superior Courts."

The last pages demonstrate the early views of the profession and the Courts concerning the lay Magistrates, their acceptance on the basis of necessity in a large and thinly populated country and perhaps a general sense that the lay Magistrate had the authority without the concomitant learning to properly execute it.

However, for the immediate future there was little change. Indeed

14. Martin's Criminal Code 1955 p. 771
15. Ref re Constitutionality of the Adoption Act, 1938 3 SCR 398

at the 1953 Magistrates' conference, the Deputy Attorney General, Eric Pepler, echoing the comments of Chief Justice Sloan made three years previously, accented the difficulties of the up-country Magistrates, "I am afraid the way of a newly appointed Magistrate is rough and hard - he has got to learn the hard way - Ottawa supplies you with a Criminal Code, unamended, and we supply you with some Provincial statutes (unamended). From then on, you are on your own, I am afraid."[16]

Another matter which concerned the profession if not the public who did not know or, if they did, did not care, was the problem caused by the Department of the Attorney General advising Magistrates on cases currently before them.

This matter was first raised in 1953, when the Deputy Attorney General, Eric Pepler, Q.C., stated that the Department will not advise the Magistrates on a pending case[17] and he went on to quote Chief Justice Macdonald of the Court of Appeal;

> "I also notice that the Magistrate reserved a decision for the purpose of obtaining the opinion of the Attorney General upon the construction of the statute. While the Attorney General may properly advise executive officers of a govenment, he cannot be appealed to for advice by judicial officers."[18]

The statement and quotation by the Deputy Attorney General was probably intended to discourage Magistrates as much as possible from seeking advice from the Department on current cases. However, as a practical matter of fact, the up-country Magistrate, having no instruction and no reference books, perhaps inevitably, when faced by some esoteric argument from counsel, would go to the only source they knew, namely the Department and there is little doubt that through the years, before and after that time and until the District Magistrates became available as a consultative source, this practice was carried on. There is every indication that the Department was as objective as it could be in the matter and generally speaking were happier to give such advice if it would mean the dismissal of the charge against the accused.[19] Indeed, running through all the Magistrates' Conferences from the beginning in 1947, the officials involved were at pains to emphasize to the Magistrates that it was not for the Department to advise them on the law or do anything which would in any way interfere with their judicial independence. On the other hand, government offered not much in the way of an educational alternative. There is no evidence that the right of the lay Magistrates to seek legal advice in deciding a case before him outside

16. M.C. 1953 p. 24.
17. M.C. 1953 p. 9.
18. R. v. Dobie, 1921, 29 B.C.R. 188.
19. Interview with M.H. McDiarmid, Q.C., November 6, 1984.

the Department as established by R. v. Mancini,[20] seems ever to have been resorted to although before the advent of the District Magistrate the Department did on occasion instruct Counsel to attend before the Magistrate in court, hear his question and advise him.

The Honourable J.A. Harvey, Q.C., who practised law for many years across the Northern part of the Province wrote, "I can recall no instance of improper interference by the government with lay Magistrates. Some of them were accustomed to refer legal problems raised in their cases to the Deputy A.G. but generally this was done openly and without objection from the Bar even though the opinions the Magistrates received were usually referred to by them as 'rulings' and so treated. However, the 'rulings' often came down on the side of the accused and I think were fairly given."[21]

The practice disappeared, as outlined in chapter 4, with the inauguration of the District Magistrate system and was a phase that the administration of justice, of necessity, passed through in the early days.

Probably a more serious problem was the inevitably close association in many instances between the police, who, in unorganized areas, did most of the prosecuting, and the Magistrate. Outside of direct reference to the Department the police prosecutor, through his knowledge of the Code and relevant Acts, was just about the only other resource immediately available to advise the Magistrate on the law and on sentencing which tended to give the prosecution a bit of an edge! Furthermore, the policeman prosecutor could have problems with objectivity, he having quite possibly originally investigated the complaint, arrested the accused, laid the information and in due course being available to give evidence. When this situation was combined with the fact that both the Judge and the Officer were members of their own little community, bent on keeping law and order, it could and on occasion no doubt did result in a bad arrangement.

On one occasion a Magistrate, observing the prosecuting constable holding out three fingers, sentenced the accused to three months whereupon the Corporal, also in Court, burst out "No, no Your Worship, he meant $300.00."

The foregoing were some of the weaknesses of the lay Magistrate system of 1954, reflecting the general state of magisterial justice since Confederation. That they were generally held in high respect as earnest and well-intentioned men is demonstrated in comments received from the late Honourable J.O. Wilson, Q.C., relating to his long practice in the Cariboo, the Honourable J.A. Harvey, Q.C., of Prince Rupert, the Honourable Judge K.F. Arkell of Vernon, His

20. R. v. Mancini 1921 - 61 D.L.R. 375
21. Letter from Hon. J.A. Harvey, September 9, 1984.

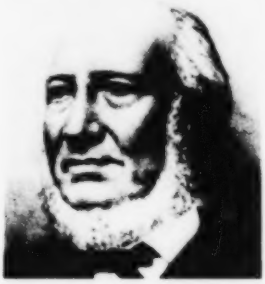
Honour Administrative Judge George O. Stewart of Prince George, His Honour Judge Duncan K. McAdam now of Victoria, and J.R. Kidston Esq. of Vernon together with, as will be later seen, the recollections of some of the first "travelling (District) Magistrates".

The root of the problem was really not the lay Magistrate, it was the neglect of the Department in some cases as to original selection and in all cases in failing to equip them in any reasonable way in order that they could adequately discharge their responsibilities.

The Attorneys General of British Columbia

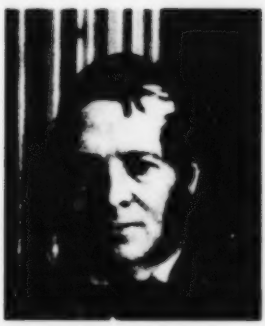
The following portraits are of those gentlemen who served or are serving as Attorneys General before and after Confederation. Until the Provincial Court Act of 1969, theirs was the responsibility for the Magistrates' Courts. Since that time legislative steps have diverted that authority to the Judicial Council but as Chief Law Officer of the Crown the wearer of the Attorney General's hat is an important figure.

Attorneys General of the Colony of Vancouver Island



The Honourable
David Cameron
Attorney General 1853 - 1862

The Honourable
George Pearkes
Attorney General 1858 - 1859



The Honourable
David B. Ring
Attorney General 1863

The Honourable
George Hunter Carey
Attorney General 1859 - 1864
For the Colony of
British Columbia 1859 - 1861

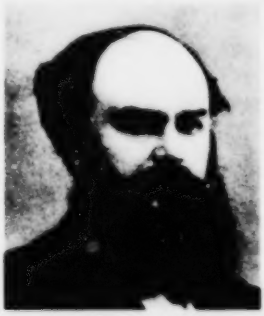
The Honourable
Thomas Lett Wood
Attorney General 1864 - 1866

Attorneys General of the Colony of British Columbia

The Honourable
Matthew Baillie Begbie
Attorney General 1858 - 1863

The Honourable
Henry P.P. Crease
Attorney General 1863 - 1870

Attorneys General of British Columbia



The Honourable
George Phillippo
Attorney General 1870 - 1871

The Honourable
Edward Graham Alston
Attorney General 1871

The Honourable J.F. McCreight
Attorney General 1871 - 1872

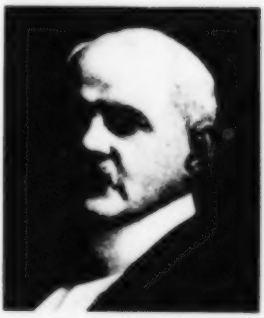
The Honourable
George A. Walkem, Q.C.
Attorney General 1872 - 1876
and 1878 - 1882

The Honourable A.C. Elliot
Attorney General 1876 - 1878

The Honourable J.R. Hett
Attorney General 1882 - 1883

The Honourable
A.E.B. Davie, Q.C.
Attorney General 1883 - 1889

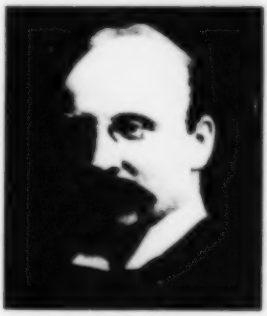
The Honourable
Theodore Davie, Q.C.
Attorney General 1889 - 1895



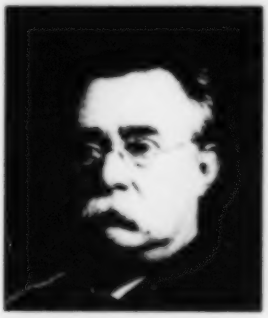
The Honourable
D.M. Eberts, Q.C.
Attorney General 1895 - 1898
and 1900 - 1903

The Honourable
Joseph Martin, Q.C.
Attorney General 1895 - 1898, 1900

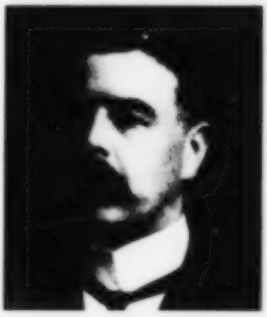
The Honourable
Albert Edward McPhillips, Q.C.
Attorney General 1903



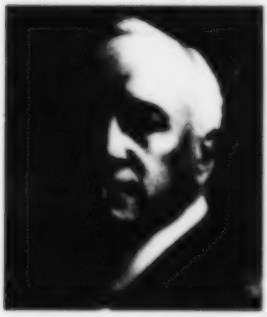
The Honourable
A. Henderson, Q.C.
Attorney General 1899 - 1900



The Honourable
Charles Wilson, Q.C.
Attorney General 1903 - 1906



The Honourable
Frederick J. Fulton, Q.C.
Attorney General 1906 - 1907



The Honourable
W.J. Bowser, K.C.
Attorney General 1907 - 1916

The Honourable
M.A. Macdonald, K.C.
Attorney General 1916 - 1917

The Honourable
J.W. De B. Farris, K.C.
Attorney General 1917 - 1922

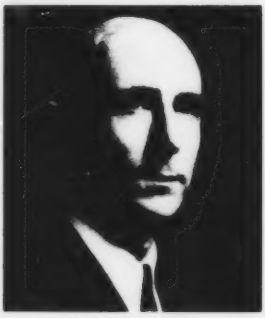
The Honourable
Alex M. Manson, K.C.
Attorney General 1922 - 1928

The Honourable
Robert Henry Pooley, K.C.
Attorney General 1928 - 1933

The Honourable
G. McG. Sloan, K.C.
Attorney General 1933 - 1937

The Honourable
T.D. Pattullo, K.C.
Attorney General 1937 and 1941
(The only layman)

The Honourable
Gordon S. Wismer, K.C.
Attorney General 1937 - 1941
and 1946 - 1952



The Honourable
Norman Whittaker, K.C.
Attorney General 1941

The Honourable
Royal Lethington
(Pat) Maitland, K.C.
Attorney General 1941 - 1946

The Honourable
Robert William Bonner, Q.C.
Attorney General 1952 - 1968

The Honourable
Leslie Petersen, Q.C.
Attorney General 1968 - 1972

The Honourable
Alexander Barrett Macdonald,
Q.C. Attorney General 1972 - 1975

The Honourable
Garde B. Gardom, Q.C.
Attorney General 1975 - 1979

The Honourable
Allan Williams, Q.C.
Attorney General 1980 - 1983

The Honourable
Brian Smith, Q.C.
Attorney General 1983 —

4. The "Travelling" (District) Magistrate

New outlooks on the Justice System - The 1955 Criminal Code — Start-up of the "Travelling Magistrate" system — Recollections of two early "travellers" — What was accomplished — Further demands on Magistrates by both Family and Children's Court and Small Claims Court — Value of the annual conferences — The Magistrates' Manual — Efforts to improve Court facilities

By 1955 the stage had been set for extensive changes in the justice system as it existed in the Magistrates' Courts. The onslaught of bright young lawyers, the product of the U.B.C. Faculty of Law, was becoming apparent in the practising profession resulting in an increasing number of legally trained appointees to the Bench together with the arrival of similarly trained people on both the political and administrative side in Victoria.

The first of this new generation on the political side was the Honourable R.W. Bonner, Q.C. who, as Attorney General, caused many changes in the Magistrates' Courts during his long incumbency, 1952-1968, and on the administrative side, Dr. Gilbert Kennedy, Q.C., who having taught at the Faculty of Law, U.B.C., since its inception in 1945, carried the responsibility of Deputy Attorney General through 1957-1973.

It has to be recognized that the Honourable the Attorney General owns a large number of hats. He wears, of course, a political one and represents a constituency. He has a great responsibility for all legislation, responsibility for the Crown's litigation, protection of the Crown's property, public property, responsibility for regulations, inspection of many government offices, and some 109 statutes that he and his Department are responsible for administering. In many ways, his most important responsibility is that of Chief Law Enforcement Officer of the Province responsible for carrying forward the work of the administration of justice and ensuring that it is done on an even-handed scale, correcting errors and preventing abuses. This involves the operations of the police, the prosecutors and the coroners, and until the Provincial Court Act, 1969, also the Magistrates. This is but a small litany of his concerns but serves to demonstrate his reliance on and the inevitable importance of the Deputy Attorney General and those with him in bringing to the Attorney General new programs for the Justice System.

The work of the immediately preceding Attorneys General, the

Honourable Gordon Wismer, Q.C. and the Honourable R.L. (Pat) Maitland, Q.C., and their Deputies Eric Pepler, Q.C., and the Honourable Allan McLean, have been related and were important and sound but it is clear enough that the "new boys" from the Law Faculty were more advanced in their thinking and were prepared to take the necessary steps in endeavoring to ensure that justice should be the same in Pouce Coupe as it was in Vancouver.

So that was one side of the coin, while on the other side the demands on the system were certainly there to be met. To meet those requirements came inevitably the cry for more lawyer judges, a realistic justification being the fact that in British Columbia, in 1954, there were more appeals from Magistrates' decisions than in any other Province in Canada, numerically and proportionately.[1]

Some of the historical representations for an all professional Bench, as outlined in the preceding Chapter, now began to surface. In 1952, the Fraser Valley Bar Association proposed, "that appointees to the position of police Magistrates and Judges of the Small Debts Court should be duly qualified Barristers and Solicitors." The Yale Bar Association then moved a similar resolution before the annual meeting of the Law Society, 1953, which was passed to the effect that only lawyers be appointed Magistrates.

Whether or not this resolution was considered in Victoria, the Department was soon overtaken by the march of events with the consolidation of the Criminal Code 1955 "to provide a complete and expeditious procedure for the non-jury trial of indictable offences - the Magistrates to be appointed in the expectation that the Provinces will designate only qualified persons."[2] What "qualified" meant was not defined but obviously the term and the legislation imposed new and heavy demands on the Magistrates' Courts. The judges to carry out those requirements were to be specially designated, leaving the non-designated Magistrates with powers similar to a Justice of the Peace and the jurisdiction conferred upon Magistrates could no longer be exercised by two Justices of the Peace sitting together. They were to hear all cases of absolute jurisdiction under part 16 of the Code and could not fob them off as preliminaries as had been the previous practice. They could also hear indictable offences by consent and take preliminary inquiries. The Department immediately designated almost 50 percent of the Magistrates, many of whom were lay Magistrates, the percentage of lay Magistrates later increased and, in fact, in the legislation of 1962 all Magistrates, lay and legally trained, became "designated", that is, "qualified" which many were not, which obviously led to the very problems that the 1955 Criminal Code had sought to prevent. The jurisdiction thus granted to the designated

1. M.C. 1954 p. 113
2. Report on Royal Commission on Criminal Code - February 22, 1952

judges was substantially equal to those of the County Court Judge, carrying potentially very serious consequences for the accused. Nowhere was this more evident than in the matter of preliminaries where a sound knowledge of the law and particularly the law of evidence is essential when the time comes to make a decision as to whether or not the accused should be committed or discharged. If the judge does not have that knowledge he is inclined to take the easy way out and commit.

It should be further remarked that the jurisdiction of Magistrates over indictable offences had before 1955 been very confused and indeed it was the exception rather than the rule for two Magistrates in different Provinces to have precisely the same jurisdiction.[3]

It is clear enough that the Government of the day, faced by the fact that they were designating lay Magistrates to assume a jurisdiction for which they were not trained, would now be receptive to the further urging of the bar on the problem.

In 1956, the Penticton Bar Association presented a resolution to the Annual Meeting of the Law Society calling for a system whereby Magistrates qualified in the law could be available as necessary throughout the Province. Interestingly enough such a plan and the reasons for it had been mooted by Attorney General Wismer in 1947 as indicated in the following excerpt from the Vancouver Sun:

"VICTORIA, June 25, 1947 - Establishment of a system of circuit Magistrates to improve the administration of justice in outlying parts of British Columbia is under consideration by Attorney General Gordon Wismer.

Mr. Wismer disclosed today that Magistrate H.S. Wood, Vancouver, will visit Alberta shortly, and will make a study of the circuit system in operation there. He will make a report to the Attorney General on its operation, and its possible application to British Columbia.

At present, most large B.C. towns have full-time Magistrates with proper legal training. But in smaller centres, cases are handled by local citizens who are not always legally trained.

The system has been attacked in the legislature several times. It is claimed stipendiary Magistrates depend for their fees on costs levied when a conviction is secured. Critics claim this sometimes results in unfair convictions in borderline cases. (*Note*, while that situation still applied under the Criminal Code, it had been eliminated for Provincial summary convictions in 1939.)

Under a circuit system the Provincial Government would appoint lawyers as travelling Magistrates who would visit various centres to handle the more important cases. Minor infractions could be dealt with by the local Justice of the Peace."

3. 33 Canadian Bar Review p. 455

Alas, no trace can be found of any report that Magistrate Wood may have made as a result of the survey.

In any event after the 1956 resolution of the Law Society the Attorney General asked the Law Society to set up a Committee to study the matter. The resolution obviously aroused great interest with the public and there was a very active debate through the newpapers supporting or denigrating the work of the lay Magistrates. P.G. Bowen-Colthurst, Q.C., later His Honour Judge Bowen-Colthurst, was appointed the Chairman of the Law Society Committee, it recommending the "travelling Magistrate" system, the official name later becoming District Magistrates. In the result Attorney General Bonner arranged a trial run in 1959, Magistrate W.L. Ostler being appointed Magistrate for the Greater Victoria Magisterial District to encompass Oak Bay, Esquimalt and Saanich, all of which had their separate courts. He did not "travel" in the sense that the cases from the outlying courts came to him but the principle of a senior Magistrate hearing serious cases was established. The experiment proved successful and two years before the District Magistrate legislation was enacted[4] on April 8, 1960, the first Mainland Magistrate was appointed in the person of Police Magistrate, A.M. Guinet of Chilliwack to serve the Eastern Fraser Valley and part of the Fraser Canyon and the southern interior including the Okanagan, Magistrate Parker Williams for the West Kootenay, the then Magistrate D.M. MacDonald, now the Honourable Judge D.M. MacDonald, operating from Kamloops for points North-West, North and East and Magistrate G.S. Denroche for the East Kootenay, the system being gradually expanded to cover the entire Province.

His Honour A.M. Guinet and the Honourable Judge D.M. MacDonald who operated very large "parishes" in the early days of the "travelling Magistrates" have been good enough to let the writer have their recollections. Excerpts from their remembrances portray the policy and intentions of the plan and the dedication with which it was executed.

His Honour A.M. Guinet, "— It is difficult now to realize that 25 years ago nearly the whole of the Province outside the large urban centres was still served by lay Magistrates. It was, however, into that situation that we were being injected. —

Some dissatisfaction with the situation was being expressed by members of the bar. — Lawyers who lost cases in the hinterland were apt to say uncomplimentary things about the Magistrate's lack of training in the law, rather than to look closer to home for an explanation for losing the case."

Judge Guinet explained that the plan caused concern to some

4. Magistrates Act SBC 1962, C 36

Municipal Governments who feared that they would be saddled with higher costs, which did not happen, and on the other hand that they might be losing whatever influence they had, or thought they had, over magisterial appointments.

He mentioned, "I don't think the system was thought of as a short term, or interim operation, and I feel that those in charge had in mind a basic system of lay Magistrates for the Province for a very considerable period into the future; something akin to the British system, and the travelling Magistrates were only intended to add a little legal expertise and experience where it was most needed."

Judge Guinet outlined the instructions given the District Magistrates namely, that they were to cease private practice and be full-time Magistrates, to take all preliminary inquiries and indictable trials and lesser offences when so requested by defence counsel, endeavour to balance case loads with other District Magistrates and finally to approach the changeover with caution and tact.

That caution and tact were necessary is demonstrated in the following excerpt:

"The scheme understandably met resistance from the local Magistrates; this didn't involve hostility or discourtesy, but some were obviously hurt and felt badly about their powers being restricted or diminished. Most of them were very responsible, reliable citizens who took their duties very seriously. One said, "I have been doing preliminary hearings for 20 years and no one said I didn't do them properly." Another said, "The Attorney General's Department has never told me I should do things differently" which was perhaps revealing as in this day of judicial independence no such thought would enter a judge's mind.

Some of the local men continued to hear trials of indictable offences by rationalizing that they were not that serious and not worth the trouble and expense of bringing the District Magistrate. There was one area where the local man continued exactly as he had done before, until reaching retirement age. No pressure was put on such people to change or conform."

Similarly there were sometimes concerns with the Police who, with the local Magistrate, had a common genuine interest in law and order for the community and often also interest in the local person accused and were inclined to look askance at the interloping Magistrate "and a lawyer to boot."

The Honourable Judge D.M. MacDonald writes describing the magnitude of the territory that he was to "Magistrate" and rather vividly the then accommodation available resulting from which he was probably the first Magistrate to have the temerity to invade Section 96 territory.

"I was appointed in 1960 as a District Magistrate in an area that went from Bralorne in the west to Field on the Alberta border in the east; north and west to Williams Lake and the Anaheim; north up the Thompson River to Valemount; south to Lytton, Merritt and Kelowna — over 35 courts to attend. The facilities varied. In most of the small communities court was held in the R.C.M.P. detachment office, the bench usually the corporal's desk. It was not unusual to have the phone ring during hearings and I would often answer it and hand it over to the officer who was prosecuting the case at the time.

— I used to sit in many different facilities. I remember one occasion in Alexis Creek when seven brothers were charged with breaking and entering and stealing homemade liquor. The trial was in February; it was 50 to 60 degrees below zero outside and a bit cool in the courtroom, being a hall above the local grocery store. The bench was located up on the stage. I had my overcoat on; the prosecutor was closer to the stove so he was properly attired in, I believe, a brand new suit. He kept pretty close to the stove. I remember the scent of smoke and then noticed a bit of smoke behind him. About that point in time, the prosecutor gave a yelp, jumped away from the stove and the whole of the rear of his new suit was completely burned out. The seven brothers got a big bang out of this.

Ashcroft had a very compact little R.C.M.P. detachment. There were two rooms, the larger of the two accommodated the police office and the other room was used as a combined cells and courtroom. I remember going there for the first time; walked in behind, and sat down at a small desk. To my left was a sort of moveable cage apparatus. There were about six persons crowded into this cage. They all appeared very hung over. Nobody seemed to think there was anything unusual about it all, and in time, you eventually got used to it yourself. —

— Some of the communities had government buildings where the County Court was located. County Court hearings would be maybe three or four times a year. I remember phoning Victoria one day and asking if it was all right if the Magistrate could sit in these courtrooms. I can't remember whether we got a complete O.K., however, there was some sympathetic reaction and I arranged then to move into these courtrooms in about eight of the communities that I used to visit. The process was slow; one at a time." —

Note: His Honour, as he then was, thus recognized the need now generally accepted for proper accommodation for the Provincial Court. It is rather difficult to realize that sole inhabitants for judicial purposes of the fine old Courthouses of the early days in Fernie, Nelson, Revelstoke, Rossland, Kamloops, and Prince Rupert to mention only

a few were the Section 96 Judges and then only occasionally, the Magistrate, hearing over 90 percent of the criminal cases, customarily being alloted a general purpose office cum courtroom in the local lock-up.

— "Accommodation was usually in the town's old wooden frame hotel; the beer parlour was located under the rooms on the first floor, and sometimes when Stampedes or some other local celebration was going on, the cowboys or loggers or miners would be romping up and down the halls all night. One soon learned to avoid the rooms located over the beer parlour. —

— It was not uncommon to travel up to 600 miles in a week. It often involved leaving on a Sunday night and I was away all week. I did this for several years. In my early years on the bench there was no legal aid as they have today, and few probation officers. We used to hear most of the indictable trials. I remember one year I had fourteen murder preliminary hearings. — The days were busy. I would arrange matters so that I would travel east and south one week, north the next, and then north and west the next. We had no clerks, no administrators; all trials were set by notifying the local O/C of the R.C.M.P. of the date and time and they took care of and arranged things from there on. Everyone would show up for trial; adjournments were almost unheard of. It seemed to work well. I got to know the local Magistrates well and would spend as much time as I could with them. They were fine calibre men and served their communities well; some of them for twenty-five years or more."

Only those who travelled the Province in those early days can comprehend the sheer physical vicissitudes, quite apart from the judging, all of which the District Magistrate had to endure.

Both Magistrate Guinet and Magistrate MacDonald felt that in the first five years of the project there was much gained in improving the quality of preliminary hearings, particularly the evaluation of crown evidence, trials of serious indictable cases, and certainly in some cases, giving help and advice to the lay judges.

After that time, while the process continued, their responsibilities diminished in the sense that there were many more lawyer judges being appointed and more District Magistrates with smaller districts presaging the advent of the Provincial Court in the 1970's when the old Magistrates' Bench, as they had known it, passed into history.

As has been mentioned some lay Magistrates were not altogether happy with the new regime, and understandably so. This presented something of a problem to both the Honourable Mr. Bonner and Dr. Kennedy at Magistrates' Conferences of that time. The difficulty was that at every Conference since the beginning in 1947, every Attorney General, every Deputy and every guest speaker always started out by

telling the assembled multitude what a fine group they were, doing 95 per cent of the criminal cases and doing it very well indeed. Consequently, it took some fairly fancy footwork to justify the new order. Undoubtedly the diplomacy of the "travelling Magistrates" had much to do with its acceptance. Certainly the results justified whatever unhappiness it may have caused.

That there was an underlying resentment was illustrated at one Conference when a lay Magistrate told the story of the two cows placidly munching in a field when a truck passed along the adjoining road carrying on its side the lettering "Acme Milk - pasteurized, homogenized, refrigerated, irradiated, vitamin fortified. Said one cow to the other, 'Doesn't that make you feel downright inadequate?'"[5]

Mr. Bonner summed up the aspirations of the whole scheme at the Magistrates' Conference 1961 - "A District Magistrate would be available for the more obviously serious cases and in most cases for preliminary hearing and also the fact that his presence would be of assistance to the Stipendiary Magistrate from the standpoint of behind-the-Bench discussion which is a normal attribute of the Supreme Court Bench, the County Court Bench and the Court of Appeal of the Province — that we shall eventually see throughout the Province, the entire population served by men of professional training — who will be able to remove any suggestion that justice as administered in one part of the Province is either better or less effective than justice administered in any other part — that we will place the whole position of the Magistrates' Bench in a higher regard among the ranks of the general public whose confidence in this Bench as in other Benches must be maintained if the general system of law enforcement and the administration of justice is to have widespread public support."

And indeed, by the late sixties, the District Magistrates covered the whole Province, the most northerly by District Magistrate Arkell, now the Honourable Judge K.F. Arkell who was the only legally trained judge of the eleven judges in his district and conducted the Preliminary Hearings and indictable trials for the area from Mackenzie, 75 miles north of Prince George up to the Yukon border and from the Alberta border to the Alaska Panhandle. Prior to his appointment the work was split between District Magistrate Duncan K. McAdam for the Peace River and the Yukon Magistrate who held a British Columbia appointment for cases in British Columbia along the border.

While the impact of the District Magistrates was the major factor through the 50's and early 60's, many other facets of the Justice System received attention.

From 1952 there was a continuous programme directed to the enhancement of the Probation service, it being generally Province-

5. M.C. 1961 p. 140

wide by 1968. That there were problems in the early days of probation to educate the Magistrates on the desirability of pre-sentence reports was indicated in comments of the then Mr. Justice Davey of the Court of Appeal, "— not for us to dictate to Magistrates - in the matter of conduct of their Courts - this Court gladly avails itself of the recommendation of the Probation Service, reserving our right to accept or disregard them - Magistrates might usefully do likewise."[6] Through this period and along with the improvement of the Probation service came great changes in the justice system directed to the betterment of the lot of young offenders.

Similarly, those years saw a steady development of statutory law designed to offer more protection to women and children, culminating in the Family and Children's Court Act, 1963, providing for one court for the whole Province,[7] the Magistrate exercising powers including those under the Juvenile Court Act, Protection of Children Act, Industrial School for Boys Act, Industrial School for Girls Act, Wives and Children Maintenance Act, Children of Unmarried Parents Act, Parents Maintenance Act, Family Assaults under the Criminal Code and the Reciprocal Enforcement of Maintenance Orders. The general effect was a close liaison of the Court with Probation Officers and Social Workers and the major thrust to avoid confrontation in court between husband and wife and, if possible, to keep the juvenile out of court altogether.

On the Small Claims side, the enactment of the Consumer Protection Act in 1962, desirable as it was, added many legal complications toward an adequate hearing and an enhanced jurisdiction provided new and further challenges for that Court.

Thus in all areas criminal, probation, family and children and small claims, the demands on the Magistrate's expertise and capability steadily increased.

To assist in meeting the new requirements, the annual conferences were obviously of great value, unfortunately mainly on the criminal side, being the forerunners of the present day seminars. Their reports were useful reference documents to day- to-day problems and their solutions for Magistrates then and now. As examples, see the address on "sentencing" given at the 1956 conference by the Honourable H. Allan McLean, Q.C., then Deputy Attorney General[8] and the address of the Honourable Judge D.M. MacDonald, then a Magistrate, on the impression the public receives based on the facilities of the Court, the appearance and presence of the Judge and the manner in which the Court is conducted,[9] or the concerns of the relationship of the Magistrate to the community and the efforts to strengthen the

6. M.C. 1963 p. 21
7. M.C. 1964 p. 9
8. M.C. 1956 p. 7
9. M.C. 1967 p. 30

Magisterial Bench expressed by Dr. Kennedy in 1961.[10]

But judicial enrichment outside the main urban areas remained terribly inadequate apart from a subscription to the Criminal Law Quarterly and a Magistrate addressing the 1959 Conference pled for more basic instructions, "If it is not feasible to bring new appointees to sit with other Magistrates for a period of time, (such a policy was adopted in the late 60's and early 70's) then it should be feasible to make at least some suitable reference material available, for example, Popples' Criminal Code, Criminal Procedure and Evidence, together with a loose-leaf book of important decisions, statutes, etc."[11] Or again in 1967, when Judge D.K. McAdam suggested an educational course for Magistrates, either by correspondence or under the aegis of the Director of Continuing Legal Education of the Law Society, all in conjunction with the Magistrates' Manual.[12] He was only six years before his time.

The same year 1967 the Magistrates' Manual originally proposed in 1954 was compiled as a voluntary work by Magistrate A.M. Guinet. In announcing it, Mr. Bonner emphasized that it was the work of Magistrate Guinet and others with him from the Magisterial ranks, was not influenced by the Department and did not contain a compilation of Departmental attitudes or directives. It was designed to assist newly appointed members of the Bench and also as a quick reference for the more experienced Magistrates. It came in loose-leaf form and was intended to be amended both as to statutes and text content twice a year.

1964 saw the beginning of the use of tape recorders designed to overcome the laborious and time-consuming necessity of the Magistrate taking it all down in long-hand. One beautiful story resulted. The Magistrate normally ran the recorder. In this instance, he had before him a counsel who he did not much like hearing. The lawyer's client was convicted. There was an appeal. When a transcript was prepared, counsel's pleadings and objections were not in evidence. Everytime he had risen to orate, the Magistrate had simply shut off the machine!

In those years the Department was also moving to avoid the connotation of the Magistrate as an arm of the police, eliminating the term Police Magistrate and Stipendiary Magistrate in 1962 and substituting the term Magistrate in and for the Province of British Columbia.[13] That Act also established the first retiring age - 75 years which eliminated some 29 Magistrates, one over 90 years of age. In those years, in a similar vein, efforts were being made to provide Magisterial facilities separate from the police in order that the public

10. M.C. 1961 p. 10
11. M.C. 1959 p. 16
12. M.C. 1967 p. 51
13. Magistrates Act, SBC 1962 Cap. 36

could enter the Court without having to pass through the police offices, let alone, as had been common before, finding that the police office was the court room. To illustrate how rapidly circumstances changed, it was in 1965 that Dr. Kennedy could proudly announce that Kamloops now had separate facilities for the Magistrates' Court, all that to be superseded again in Kamloops in 1984 by a still grander arrangement.

The year 1968 and its Conference was a high water mark for the Magistrates' Court. On the criminal side over a 12 year period it had moved to a relatively even level of justice for the entire Province, the Family and Children's Court Act and other essential Acts had been amended to afford reasonably simple and inexpensive arrangements for maintenance proceedings and enforcement both in and out of the Province and the Small Debts jurisdiction increased to a more realistic amount of $500.00. None of these changes led to perfection nor could it ever be, but surely a remarkable achievement in that time frame and a vast change from the situation in 1950.

As the curtain came down on the Magistracy a notable facet had been the dedication of the Department through the years of rapid development to the objective of ensuring that whatever it did was done with the independence of the Magistrate always in mind. Over and over again, at the various conferences, both the Honourable Mr. Bonner and Dr. Kennedy stressed this factor and all the evidence is that they and those working with them practiced what they preached. Probably it was as well summed up as any at the Conference in 1968[14] when the policy of Magisterial exchanges was announced. On being asked if there had to be prior consultation with the Department, Dr. Kennedy replied, "You don't consult with us - in other words, we don't pick the judge."

There is no doubt, as will be seen in subsequent chapters, that there remained problems of performance still to be dealt with, but within the concept of the professional judge-lay judge relationship and with the facilities then available, the Magistrates' Courts for the Province had perhaps progressed about as far as they could go.

14. M.C. 1968 p. 36

Seminar - Prince Rupert - 1970

The "travelling" District Judge system. From left to right, their Honours Judges Thomas Johnstone (Prince Rupert), Duncan K. McAdam (District Judge), D.M. Leach (Queen Charlotte City), H.R. Robbins (Port Edward), Ian McIntosh (Stewart), Jim Lund (Ocean Falls), William Lambie (Prince Rupert), W.N. Poole, (Prince Rupert).

Early "travelling" District Magistrates, 1960

His Honour
District Judge Allan Guinet (retired)

The Honourable
Judge D.M. MacDonald

5. The Period from 1969 to 1972

Considerations affecting the movement toward a Provincial Court — Attorney General Peterson takes over from Attorney General Bonner — One Court suggested for Criminal, Family and Children and Small Debts — The Provincial Court Act, 1969 — The Judicial Council — Further movement toward the appointment of only legally trained judges

Although the Department, over the years, had made every effort to avoid interference or the suggestion of interference with the judicial duties of the Magistrates there undoubtedly remained the nagging concern with the situation in which the Attorney General was responsible both for the selection and appointment of Magistrates and any ensuing steps that had to be taken should such appointee morally fail in his magisterial duties. Further, it had been suggested in the legislature from time to time that the appointments were political (this generally seemed to arise when some member of the public was dissatisfied with the sentence meted out and is not unknown today). As a matter of fact, the appointments by the Attorney General had been non-political, selection of Magistrates being made with the assistance and advice of prosecutors, other members of all Benches in the Province, the Secretary of the Law Society, leaders of the Bar in various areas and the Police. In some cases the municipalities were consulted, but not extensively, to avoid potential involvement with local politics. In other words, the system of selection by the Department was somewhat similar, although not as comprehensive or formal, as the arrangements that now pertain under the Judicial Council. Thus on the selection side the actual problem, real or fancied, was the potential direct line to the Attorney General.

A problem of dealing with the occasional Magistrate who behaved improperly also posed a difficulty for the Department, somewhat ameliorated by the advent of the District Magistrate who could take care of minor peccadillos. It had always been made perfectly clear that there never would be any interference with the Magistrate so far as his judicial decisions were concerned. Those could be dealt with when necessary by appeal. Nevertheless, when the Department had to take disciplinary action against a Magistrate, there could always be the suggestion that the action was being taken for some present or past undesirable judicial decision. No evidence appears that any Magistrate suffered at the hands of the Department for other than moral turpitude. But when such occasion did arise, justice was not much

walled in by due process, the Magistrate being invited to Victoria to meet the accusation and depending on the evidence and explanation, exonerated, censured, or if it was a really bad case, invited to resign. Presumably, if the Magistrate refused to resign, his appointment would have been cancelled. In actual fact, much the same scene can be played out today, the Chief Judge taking the position previously occupied by the Attorney General and/or his Deputy except that today, in a serious matter, an inquiry before the Judicial Council would be the result rather than revocation of the Commission - if a Judge felt he should not resign or perhaps in any event.

Similarly, before 1969, there was no one available to protect a Magistrate when he was improperly publicly attacked except the Department of the Attorney General. There were occasions when either the Attorney General or the Deputy Attorney General in the above circumstances quite properly rallied to the defence of the Magistrate. Once again, this was a situation which could make a section of the public credulous of the independence of the judiciary.

Aside from the problems of appointment and discipline, the members of the Magistrates' Court, under the District Magistrate system, was a very different group from that of the early fifties. There were many more Magistrates with legal training and those without could consult as necessary with the District Magistrate. Consequently, the Magistrates could function on their own without reference on judicial matters to the Department.

Nevertheless, they could only be described as a somewhat amorphous group, individual jurisdictions being established under the Magistrates' Act, the Family and Children's Act and the Small Debts Act. Commonly in any community different Magistrates carried out the individual jurisdictions and there had inevitably developed a hierarchy with the Criminal Court Magistrate at the top.

Thus looking at the whole scenario, the method of appointment, of discipline and of general organization, it was apparent that the stage was set for some traumatic changes in the justice system at the Magistrate's level, a change aimed at general improvement in its operational effectiveness while at the same time recognizing its very real importance to the public it served and serves.

The time was appropriate in that the Honourable R.W. Bonner, Q.C., who had seen the Magistrates' Court through its great period of growth, 1952 to 1968, had just stepped down, leaving the District Magistrate system firmly established and it was for his successor, the Honourable Leslie R. Peterson, Q.C., to take the next necessary steps.

He staked out his thinking on the matter in an article in the Advocate,[1] where he stated that,

"The administration of justice in any jurisdiction depends in part

1. A. 1969 V. 27 p. 25

upon the proper constitution and organization of the Courts to meet the needs of an ever expanding population."

He pointed out that on the criminal side 90 to 95 percent of those involved were tried by Magistrates, that the majority of Family and Children's Court problems were dealt with in the same judicial unit and that the growth in jurisdiction of the Small Debts Court had increased the importance of the Small Debts Court Judge so far as the public was concerned. And he then went on,

"It is only fitting that these three courts which are basic to the administration of justice in any Province should be given the status commensurate with their responsibilities. — In many of the places throughout the Province, the same Judges handle all three types of work and it is now felt desirable, not only that the status of these people should be set in proper perspective to their responsibilities, but that the varying responsibilities be organized under one court for these provincially appointed Judges.

These Judges should be removed from any suggestion of involvement with municipalities. So their salaries, whether they serve in a municipality or in an unorganized territory will be paid by the Province.

At the same time, it is anticipated that there will be a larger measure of supervision of the administration of this new court by its District Judges than is now the case by District Magistrates. This will also enable us to give more day to day attention to the problems of the Family and Children's Court including those associated with juveniles as well as deserted wives."

The Honourable the Attorney General had had some experience with the Ontario Provincial Court Act and was of the view that something similar at least in principle should be adopted for British Columbia.

Dr. Kennedy then proceeded to draw the Provincial Court Act, no doubt with a considerable sense of relief in that its passage would relieve the Department of the onerous responsibilities for both selection and discipline of the Judges.

As the Act was drafted there was inter-departmental discussion as to whether the term Provincial Court Judge should be adopted or the term Magistrate retained. Some doubts probably still remain as to the eventual decision in that regard but "What's in a name? That which we call a rose by any other name ....."

As a matter of fact the brave new Act very nearly did not get off the ground. It involved, of course, the paying of all Magistrates by the Provincial Government instead of the Municipalities, to avoid any suggestion of judicial involvement of the Judges with the latter and the bill would have been some $800,000 a year. To get over this hurdle, the Attorney General and his Deputy attended a meeting with the

then Premier, the Honourable W.A.C. Bennett, who, as was his custom, wore two hats, that of Premier and that of Minister of Finance. As Minister of Finance, he turned the proposed legislation down as being too costly. After the meeting, the Premier sat chatting to his Comptroller while Dr. Kennedy was gathering up his papers and the Honourable the Attorney General had left. Those who know Dr. Kennedy are aware that when he is displeased, he looks it. The Premier observed this stormy scene and asked the Deputy what was troubling him. He was told that he had just turned down a proposal contrary to what he, the Premier, had said he wanted to do, i.e., improve the administration of justice and assist the municipalities. Mr. Bennett asked for an explanation and then looked over at his Comptroller and said, "Give Dr. Kennedy his $800,000." Thus from small incidents, big things sometimes flow and the Provincial Court Act, 1969, c.28, accomplishing generally the objectives set out by Mr. Peterson came into force August 1, 1969.

The Provincial Court of British Columbia was an actuality.

The Act brought the related provisions of the Family and Children's Court Act and the Magistrates' Act under the Provincial Court of British Columbia, Family Division; the Small Debts Courts Act became the Small Claims Act, matters under that Act to be dealt with in the Provincial Court of British Columbia, Small Claims Division; all Judges were to have province-wide jurisdiction for the duties conferred or imposed upon them; the Court was to be a Court of Record; and the Judges were to have tenure subject to removal, after due process, for misbehaviour or inability to perform their duties properly.

The Court was to be administered by a Senior Judge, the following year renamed Chief Judge, and a Judicial Council consisting of Provincial Judges, Bar representatives and laymen who would consider proposals for improving judicial service, proposed appointments of Provincial judges and disciplinary complaints. However, the Act did not completely resolve the problems of appointment and discipline in that Section 22, defining the functions of the Judicial Council, led off with the preamble, "The functions of the Judicial Council include, at the request of the Attorney General —" which would apparently leave the final say for appointments and discipline where it had been before.

It is doubtful that at the time the new Act was passed the originators intended to do more than establish an independent Provincial Court, envisaging that it would carry on as it had before under the District Magistrate, now District Judge system, with its amalgam of legally trained and lay judges. (There have been suggestions that those responsible would have removed lay judges at that time, but political considerations inhibited the idea.)

The Act included the provisions concerning Justices of the Peace extracted from the Magistrates' Act 1962 specifying jurisdiction with extensions to be granted by the Senior Judge, later the Chief Judge,

and certain other specified judges.[2]

On July 21, 1970, the Judicial Council provided for in the Act was created by Order-in-Council. Magistrate Cyril White was appointed the first Senior Judge. He had originally been a Magistrate in Vancouver and, although retaining that status, had earlier been appointed Chairman of the Workmen's Compensation Board. Consequently, his later Senior Judge appointment was a part-time arrangement which, considering his continuing responsibility to the Workmen's Compensation Board and the uncharted waters ahead for the Judicial Council, offered a rather formidable challenge.

With the Senior Judge the other members of the original Council were District Judge (now the Honourable Judge) K.F. Arkell, District Judge A.M. Guinet, Edward D. Strongitham, Q.C. (Treasurer of the Law Society) and lay members T.G. Gooderham, Regional Director of Canadian Labour Congress in Vancouver, J.R. Hetch, Consul General for Austria in British Columbia, and the Honourable James Sinclair, Chairman of Lafarge Cement and a former Federal Liberal Cabinet Minister.

It is difficult to sufficiently emphasize the importance of the offices of Chief Judge and Council carrying as they do and as related to the Court most of the responsibilities previously exercised by the Department.

Council held its first meeting August 10, 1970, and from the start had many matters on its plate. It was, for example, almost immediately involved in a serious disciplinary inquiry, also recommending that full-time judges not engage in the practice of law, that only legally-trained judges be appointed, that the matter of legal education of judges be examined and that part-time laymen appointed to remote areas be confirmed only as Justices of the Peace and not as Provincial Judges.

At about this time there commenced a whole train of events which were to culminate in the Provincial Court Act 1975, affecting Judges and Justices of the Peace and producing the Court much as it is today.

In 1971, Judge Arkell was requested by Council to make a comparative study with recommendations of Provincial Judges' salaries as compared to the other Provinces. The resulting very comprehensive report[3] was divided into three parts, the first covering the role, function and office of the Provincial Court Judge, the second salaries, pensions and travel expenses of full- time legally-trained Judges and the third, the problems of part- time, legally-trained and lay Judges not only as to salaries and pensions but also their desirability or otherwise in the Court system. In this regard, among source material, particular reference was made to various sections of the McRuer Report on Civil Liberties 1968 which dealt extensively with the importance

2. Provincial Court Act 1969, s. 24
3. Report on Provincial Court Judges' Salaries, Pensions and Travel Expenses, March 25, 1971

of the Magistrates' Court if the rights of the individual were to be protected.

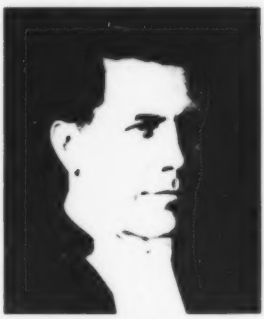
Then came the move towards law reform sponsored by the B.C. Branch, C.B.A. In late 1967, C.C. Locke, Q.C., now the Honourable Mr. Justice Locke, suggested a delineation of responsibilities between the B.C. Section, C.B.A. and the Law Society. Previous to that time the Benchers of the Law Society ran the show, the B.C. Branch having considerable ambitions but no real authority. In 1968, a transfer of authority from the Benchers to the B.C. Branch commenced including the responsibility for law reform. To activate the problems of law reform the B.C. Branch resolved in November 29, 1971 that a Special Committee of the B.C. Branch be formed to consider the methodology for a full inquiry into the Administration of Justice in the Province.

The special committee was formed with the approval in principle of the Attorney General, and reported May 4, 1972 making wide recommendations which included particularly the necessity for the examination of the operation of the Provincial Court in all Divisions and again reflecting many of the concerns of the McRuer Report.[4]

Meanwhile, Mr. Peterson, on March 29, 1972, allocated to the Law Reform Commission a somewhat similar project on administration of justice and organization of the Courts and importantly for this narrative, the Law Reform Commission retained David Vickers, Esq., to draw the terms of reference for the project. While events overtook the Law Reform Commission which did not proceed with the project, the terms of reference as related to the Provincial Court proposed an examination of that system along much the same lines as that reported on by both Judge Arkell and the Special Committee, B.C. Branch and Mr. Vickers was soon in a position to see implemented the general thinking contained in the two reports and the mentioned terms of reference.

Finally, in this litany of the shape of things to come, there was a change of government September 15, 1972 which precipitated steps which had been in the minds of many. All of these actions culminated in the Provincial Court Act 1975 and generally the Provincial Court as it is today. The next chapter relates the necessity of the change specifically as it relates to "judging". It must be made clear that these changes were but a part of a total plan for an integrated justice system. The court was not established as a benefit for the legally-trained Judge nor as an island without responsibilities to certain aspects of court management. An appreciation of the need for this expanded concept can be gained from the work "Judicial Administration in Canada" by Millar and Barr.[6]

4. A. 1972 v. 30 p. 170
5. Terms of Reference Law Reform Commission - Administration of Justice and Organization of the Courts Project (1972).
6. Judicial Administration in Canada by P.S. Millar and Carl Barr-McGill, Queen's University Press.



His Honour
Judge Kenneth F. Arkell

The original Members of Judicial Council July 21, 1970

Chief Judge Cyril White - portrait with Chief Judges' page XIII
District Judge Allan Guinet - portrait with early "travelling" Magistrates page 52

Edward D. Strongitharm, Q.C.
Treasurer, The Law Society
of B.C. 1970 - 1971

T.G. Gooderham, Esq.
Regional Director of the
Canadian Labour Congress

J.R. Hetch, Esq.
Consul General for Austria in
British Columbia

The Honourable James Sinclair
Chairman, Lafarge Cement,
a former Federal Liberal
Cabinet Minister

6. Further Developments toward the Provincial Court of today, 1972 - 1975

— Reasons for an all professional Court - Influence of Judicial Council — the departure of the Lay Judges — The all Professional Provincial Court, 1975

Arising from all the various moves toward an improvement in the delivery of justice, in 1972 the Honourable the Attorney General, Alex Macdonald, commissioned Dr. M.A. Matheson to head up a Task Force on Correctional Services and Facilities. The report of this survey, dated February 28, 1973, led to the formation of a Justice Coordinating Council and, in turn, to the Administration of Justice Act, 1974, introduced by Attorney General MacDonald, March 18, 1974, providing for a Justice Development Commission, the function of the Commission being set out in Section 5(a), to develop and coordinate plans for the future development of the administration of justice in the Province in all its aspects.

This was a broad mandate defined in the Advocate[1] to be generally exercised under the ultimate chairmanship of the Deputy Attorney General, Mr. Vickers. There were few activities of the Commission that did not impinge directly or indirectly on the Provincial Court including a Court Planning Group, Justice Councils, Manpower Training, Information Systems, Police, Corrections and Crown Counsel, Coordinated Law Enforcement Unit, Legal Aid, Native Court Workers Program, Para-legal Program, Pretrial Services, Civil Enforcement of Fine Collection and finally the Provincial Court itself. Obviously the Commission had very wide powers and concern was expressed during the debate on its potential detrimental effect on judicial independence, an event that did not occur, in fact, quite the contrary.

One of the first moves made by the Commission, March 1974, was to transfer, where they existed, the responsibility for all prosecutions from the Municipalities to the Province. At the same time nine prosecutorial districts covering the whole Province were established, to be manned by legally trained prosecutors. The stated objective was "that an accused be brought to trial as expeditiously and fairly as possible". These changes eliminated in the outlying areas the policeman prosecutor and the undesirable attributes mentioned in Chapter 3 which had accompanied that arrangement. Thus, at one step, the Court, the prosecution and the police were separated.

1. A. - 1974 - V. 32 p. 78

The many-faceted program proposed for the administration of justice required a massive input from all sorts of people, professional and otherwise, who could explore particular areas and suggest and apply necessary changes. Directly concerning the Provincial Court the three men to particularly mention were Chief Judge L.C. Brahan, District Judge K.F. Arkell, now the Honourable Judge K.F. Arkell and David Vickers, Esq.

Chief Judge Brahan, the first full-time Chief Judge, was appointed November 2, 1972, succeeding Chief Judge Cyril White who, in a part-time capacity, had ably seen the Court and Judicial Council through its very early days.

District Judge K.F. Arkell had been a member of the Judicial Council from its inception in 1970 and was unofficially during this period Deputy Chief Judge, the Act at that time not providing such an office.

David Vickers, Esq. was appointed Deputy Attorney General in September 1973 in place of Dr. Gilbert Kennedy, Q.C., who had so constructively served both the Magistrates' Court and the Provincial Court, 1957 - 1973.

It would be fair to say that the foregoing three gentlemen under the then Attorney General, the Honourable A.B. Macdonald, Q.C., were the chief architects of what was to be for the Provincial Court a new regime, building on the painstaking work of the Honourable R.W. Bonner, Q.C., Dr. Gilbert Kennedy, Q.C., the Honourable L.R. Peterson, Q.C. and Chief Judge Cyril White, and transposing the Court from the legally trained/lay Judge amalgam to a Bench consisting with but three exceptions of Judges with legal training and at the same time, for all practical purposes, completing the movement of the Court away from the Department by strengthening the authority of the Judicial Council particularly in removing the former clause providing that it function "at the request of the Attorney General."[2] This ensured that the selection of Provincial Court Judges under the aegis of the Judicial Council and separated entirely from the Department would be the best and fairest of any selection system in Canada and that complaints and inquiries concerning Judges would be the responsibility of Chief Judge and Council.

Was the removal of lay Judges really necessary? In retrospect, the answer has to be "yes". The District Judge arrangement had effected very great changes on the standards of justice throughout the Province. However, there remained many lay magistrates and by the Magistrates' Act, 1962, all Judges were given the special authorization required under part XVI of the 1955 Criminal Code. The same Act, Section 8, provided that District Judges were, so far as feasible, to take all preliminary hearings and indictable trials but, in practice, because the District Judge was not available, or the local Judge con-

2. Position paper on the Judicial Council by Chief Judge Brahan - August 6, 1973

sidered the matter unimportant, or for any number of other reasons, the lay Judges continued to hear many of these serious matters together with the concomitant issues of sentencing, not to mention summary conviction matters involving potentially heavy consequences to the accused.

Enough has been said in earlier sections of this book to demonstrate that the combination of an untutored lay Judge, in many instances hearing very few cases plus the policeman prosecutor seriously disadvantaged members of the public who perforce had to seek justice from those sources. While the District Judge system had gone a long way toward solving many of the problems, the fact remained that when the lay Judge was in Court and doing his own thing he could not be interfered with.

Furthermore, in those days, in any small centre, one sometimes found three Magistrates, Criminal, Family and Juvenile and Small Claims. Outside the urban areas, Family and Juvenile and Small Claims was almost entirely within the purview of the lay Judges who did not benefit greatly from the District Magistrate system confined as it was largely to criminal matters. Consequently in these areas of ever growing importance there had been little improvement in selection or training since the 1950's.

In 1973, Chief Judge Brahan arranged two surveys covering the Family and Juvenile and Small Claims Courts. The first report by His Honour Judge W.S. Selbie (now the Honourable Judge W.S. Selbie), a feasibility study for a Unified Family Court, revealed serious weaknesses in the area of Family Law, "in some of the centres, the Judge is the intake worker, counsellor and eventually the Judge of the facts and the law. It becomes obvious that it is not good enough to have show cases on the Lower Mainland and chaos in the rest of the Province."[3]

As a matter of interest the Selbie proposals never saw the light of day being superseded by the Unified Family Court experiment operating in Surrey and Richmond which in the end proved unworkable. The original Selbie proposals still offer a viable alternative but until realistic jurisdictional changes are effected no complete solution to the Family Law problem is in sight. The only certain thing is that within the limits of their jurisdiction and with the staff available today, a Provincial Court Judge now meets and solves the family and childrens' problems as never before.

The second investigation by His Honour Judge G.R. Sutherland and Mr. Brian Tavernor, J.P., consultant to the Chief Court Administrator, revealed serious weaknesses in the out of town Small Claims Courts. These courts were operated at that time under no general procedural scheme with few guidelines, no training for the lay Judges

3. A practical analysis of the feasibility of undertaking a pilot project of a Unified Family Court in the Province of British Columbia, Judge Selbie, 1973

and generally with completely inadequate accommodation. The onus on the Judge to get his fee from those who perforce came to Court was inherently bad. In some instances a close relationship was found between the Court and debt collection agencies, agreeable no doubt to the local merchants but not adding greatly to the lustre of an independent Court. The whole tenor of their report dated May 22, 1974, as it affected the Province outside the larger urban areas served to emphasize the need for a professional approach for the protection of the public and the inclusion in fact of the Small Claims division into the Provincial Court system. The report summed it all up. "The Small Claims Courts, without exception, appeared to be an afterthought."[4]

Resulting from the survey, Mr. Tavernor prepared the original Manual of Small Claims Procedures but before other recommendations of the survey could be put into effect their intention was overtaken by the formation of the all professional Court in 1975. From the judicial aspect this has resulted in a proper hearing of Small Claims matters throughout the Province. Unfortunately because of all the complications of consumer law plus increases in jurisdiction, the problems for the untutored plaintiff and defendant and for the Judge sitting in the middle have done nothing but increase.

On the other side of the lay magistrate question was the often repeated and substantial argument that he, a local resident, knew his community and its requirements and was always available. Knowing the community sometimes presented problems. The writer "travelled" a bit and remembers, having just dismissed some alcohol related offence, talking to the local Magistrate who gently opined, "that everybody knows old so and so gets drunk every Saturday night"! In respect to availability the problem has been largely solved through the selective appointment and proper training of Justices of the Peace with appropriate jurisdiction as authorized by respective Chief Judges.

Indeed there were exceptional lay Judges, the sort of person who would have been good at any profession because he had a mind for it which when honed by Court experience produced the equivalent of any legally-trained Magistrate and better than some. District Judge W.L. Ostler of Victoria and Judge Roderick L. Haig-Brown of Campbell River were such men and there were many others. It is probable that if the selection of lay Judges had been as rigorous as for Judges today and if they received the seminar training now available and had the benefit of a professional prosecutor plus a steady full-time stint in a court with proper accommodation and reference material, the result would have been rather more acceptable. Judge Haig-Brown

4. Interim report of the Small Claims Courts - Judge S.R. Sutherland and B. Tavernor, J.P. - May 22, 1974

developed this theme in an article, *The Lay Mind in the Law* written as only he could write appearing in the U.B.C. Law Review.[5]

Not often mentioned, but on the track record of governments extending over the previous hundred years, the lay judge was undoubtedly less costly.

In the total end result, it did appear that despite all the advances after 1950 the person in many outlying areas before 1975 could still receive in the Provincial Courts an inferior brand of justice to the person in Vancouver. That this carried serious implications is underlined by the fact that at that time there were some 17 offences under the Criminal Code within the jurisdiction of a Magistrate which carried a possible sentence of life imprisonment.

Finally, the most enthusiastic proponent of the lay Judge would agree that today, with the blizzard of Federal, Provincial and Municipal legislation, each one ending up with the inevitable "or else", the "or else" always involving the Judge, now capped off by the intricacies of the Charter of Rights, the old District Magistrate lay Judge system could not have remained an answer.

After weighing all the pros and cons, the decision was made that for the future all Provincial Court Judges should have legal training.

Nor was any evidence lacking that the Chief Judge and Judicial Council were thinking in that direction, recommending in 1971 and again in 1972 that only members of the legal profession be appointed to the Provincial Court Bench. At that time, of the 210 appointees to the Provincial Bench only 75 had legal training. A newspaper article March 21, 1974, telling of the appointment in 1972, apparently without consulting Judicial Council, of the Government Agent at Atlin as Provincial Court Judge caused eyebrows to lift. The resulting investigation revealed that there were five Provincial Court Judges-Government Agents in the Province and they were duly exorcised as being contrary to S. 2(f) of the Canadian Bill of Rights - "No person charged with a criminal offence shall be deprived of the right to a fair and public hearing by an independent and impartial tribunal."

So departed the Government Agent-Magistrate-Provincial Court Judge who additionally had been or had become, since the gold field days of Magistrates Ball and O'Reilly in 1858, the gold commissioner, mining recorder, land commissioner, water recorder, registrar of births, deaths and marriages, marriage commissioner, clerk of the peace, district registrar of the Supreme and County courts, provincial assessor, provincial collector, coroner, deputy registrar of voters and official administrator - the associated judicial appointment inappropriate to the new age but nevertheless leaving a fine overall record of public service.

Perhaps enough has been said to indicate that on the Judicial Coun-

5. U.B.C. Law Review V. 9 p. 1

cil side the objective was to professionalize the Provincial Court Bench so that in every courtroom throughout the Province there would be a legally-trained mind in charge of the judicial process, a goal also consistently sought by the B.C. Branch C.B.A.

It is clear enough that the concept was accepted both by the Honourable the Attorney General, Alex Macdonald, Q.C., and his Deputy, David Vickers.

Mention has already been made of the Terms of Reference the latter had prepared in 1972 for the Law Reform Commission which called into question all the features which a good court system should provide. Obviously, Mr. Vickers would have these very much in mind, both in considering suggestions from the Judicial Council and sitting as the titular head of the Justice Development Commission. Furthermore, as all who knew him realized, he had a very clear perception of the importance of the Provincial Court and that its proper performance was an essential factor to ensure that the scales of justice were indeed properly balanced for all.

The first and essential step was the assumption by the Provincial Government of financial responsibility for the administration of justice throughout the Province thus paving the way toward a truly professional court with proper facilities and courtrooms.

Then came the make up of the court and obviously a perplexing problem was the complement of lay Judges in the Provincial Court and for consideration was the Act of Settlement, 1701, the corner stone of judicial independence - which means tenure - but the end justified the means.

In 1974, District Judge Arkell, at the request of the Deputy Attorney General, drew a new Provincial Court Act to involve a complete restructuring of the Provincial Court designed to be a Court presided over by professionally trained people, sitting in proper facilities, properly paid and provided with proper pensions.

The new Act required that Judges must have five years membership in the Law Society or other legal or judicial experience satisfactory to Council, eliminated employment other than for judicial duties, must be full-time and established tenure but with a not withstanding section, S. 34, which terminated all but three of the lay Judges. Interestingly enough, the proposed Act did not traverse the Justice Development Commission but went directly from the Department to the Legislature for consideration and enactment.

The Act was proclaimed September 15, 1975, the lay Judges being almost entirely terminated, some 40 odd a few months earlier through the Provincial Court Amendment Act March 3, 1975 which reduced the age limit, the remainder, some 55, with but three exceptions, Administrative Judge His Honour W.L. Ostler, His Honour Judge Lloyd Steele and His Honour Judge E.L. Anderson, being given a choice of retirement with an honorarium plus a certificate for meri-

torious service or a reduction to Justice of Peace at a very modest income. Most retired. (This was probably the greatest violation by volume of the Act of Settlement, 1701, that has ever occurred anywhere, but nobody raised that issue!)

The elimination of the lay Judges was not done without hurt. The separation allowance was not ungenerous, the individual's (some part-time, some full-time) current monthly salary, which of course varied, multiplied by the number of years service, less income tax. For some with many years of service the amount was considerable, the maximum $53,000 ranging down to as little as $1,500. But more of the hurt came in the fact that these were honourable men who had served their Province, its people and the Court unstintingly and to the best of their ability and this abrupt displacement was understandably hard to accept.

The following letter to the Associate Deputy Attorney General (Mr. Pearson) from his Honour Judge D.M. Leach is indicative of the thinking:

"Good to hear from you after such a long interval - even though the subject matter isn't palatable!

One could have hoped for a more gracious termination of services, and a subtler hint of my unacceptability as a justice under 34(2) than a 45% decrease in salary. However, I have enjoyed my brief association with yourself and consider myself most fortunate in having been able to work under the kindly influence first of District Judge D.K. McAdam and later of District Judge D.W.S. Ward who freely shared their considerable knowledge and experience without condescension. They were a great support.

I shall try to leave everything in good order on the 15th and will deposit the courtroom keys with the respective R.C.M.P. Detachments unless you instruct otherwise.

Briefly then:

I understand that my appointment as Provincial Judge will be rescinded under the provisions of Section 34(1) of the new Provincial Court Act, which section is to be proclaimed September 15, 1975.

I shall not elect to hold office as a justice under Section 34(2) of that Act.

After September 15, 1975, all mail for the Provincial Court, both Queen Charlotte City and Masset, will be redirected to the Masset Courtroom and in the interim I'll make arrangements with the Regional Administrator, Donald Rose, J.P., for rental of a Postal Box at the Masset Post Office."

"What a man's work comes to! So he plans it, performs it, perfects it, makes amends for the toiling and the moiling and then, sic transit!"

It was a hard decision but in retrospect there was no other way.

The new Act further amended the position of Justices of the Peace, bringing them under the Judicial Council for proposed appointments and discipline and redefined their jurisdiction extensions of which, within statutory limits, were to be on the authorization of the Chief Judge.[6]

The 1969 Provincial Court Act had confirmed all Justices of the Peace holding prior appointments. There were at that time some 700-800 in the Province, many holding office the purpose for which had disappeared and virtually all those outside of urban centres with no training at all. As a preliminary step in 1974 Mr. Roy Ballam, J.P., under the direction of the Chief Judge, was assigned to develop and take charge of a province-wide training program for Justices of the Peace, a task which he has continued to carry out. Following, in 1976, all Justices of the Peace appointments were cancelled and re-established where needed. Since then there has been careful selection by the Judicial Council and comprehensive and continuous instruction to meet the very real demands of their jurisdiction. Indeed, their education today is far superior to anything received by the pre-1975 lay Judges and has had the important side effect of removing the old time Justice of the Peace from the influence of the then generally more knowledgeable police.

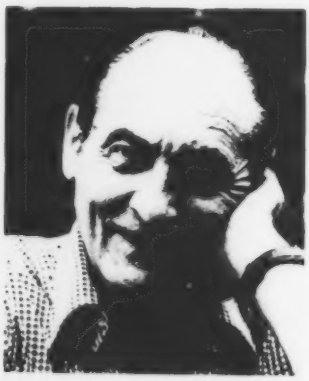
Probably of equal importance to the removal of the lay Judge by the 1975 Provincial Court Act was the restatement of the authority of the Judicial Council, allowing it to function on its own and not, as previously, at the request of the Attorney General. This separation of the Department and the Court had been a long time coming and now at this point in time, the Provincial Court was in a position in fact as well as theory to be independent and concomitantly to assume the responsibility that that independence required. That the path has not proved easy is dealt with in the Chapter on judicial independence. Along with the independence of action of Judicial Council came new responsibilities for continuing education, and the preparation of a code of ethics, both being in fact carried out by the Judges' Association as outlined in Chapter 9. Thus the unattainable goal of equal justice for all came closer to reality.

6. Provincial Court Act (1975) S. 25

Three of the many notable lay Judges

His Honour Judge E.L. Anderson of Chilliwack, appointed Magistrate in 1945 and still going strong!

His Honour District Judge W.L. Ostler of Victoria, appointed Justice of the Peace 1947, Stipendiary Magistrate 1956, full time Police Magistrate for the County of Victoria, 1959, retired 1982. He was the first to experiment as a "travelling" Magistrate, 1959.



His Honour Judge Roderick Haig-Brown of Campbell River writer, soldier, Magistrate and Judge — he had a clear understanding of the requirements and execution of the judicial process. Appointed in 1945 he was retired by the reduction in age legislation of 1975.

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Roy Ballam, Esq., J.P.
Responsible for the training program for Justices of the Peace since 1974.

Dr. Gilbert Kennedy, Q.C.
Deputy Attorney General through much of the development period of the Magistrates' Courts and Provincial Court 1957 - 1973.

David Vickers, Esq.
Deputy Attorney General 1973 - 1977 in the period that the Provincial Court was established as a truly independent court.

7. Judicial Independence

General responsibility of the Chief Judge and Judicial Council — Complaints — Problems of Departmental Intervention — How the Judge is paid — Statutory Control

The matter of judicial independence has been mentioned from time to time in this book. Because it is the sine qua non of any Court in our society, its history has always been important for the Magistrates and now the Judges of the Provincial Court of British Columbia, remembering always that with judicial independence comes judicial accountability.

As a starter let it be said that the writer was appointed a Magistrate in 1957 in the heyday of the Magistrate's Court in this Province and must confess it never once occurred to him that he was not an independent Judge, undoubtedly the general reaction had the question been put to other Magistrates.

The reason for this goes back to the beginning of the seventeenth century in England when the Magistrates began to realize that they were not members of the executive but rather that their jurisdiction was conferred on them by the law of the land to which they were answerable rather than to the King, their independence consequentially depending on public opinion and its respect for the law. It was at that time that Defoe wrote, "The meanest English plowman studies law and keeps thereby the Magistrates in awe. Will boldly tell them what they ought to do and sometimes punish their omissions too."

It is true that until the enactment of the Provincial Court Act 1969 the Magistrate's Courts was at least technically not independent of the Provincial government and there is no doubt at all that in the pre-Confederation days the existence of unbiased "judging" could be suspect where government affairs were involved. That there was occasional government interference in tenure for other than judicial misconduct has been recounted in Chapter 2 when the government, for political reasons in the 1930's, cancelled magisterial appointments, but when these lapses did occur it was made very clear to government that public opinion was understanding of the need for judicial independence and intolerant of contrary government presumption. So there was a traditional bulwark of independence shared by society generally and the Judges individually. It would be doubtful that many of the public or, indeed, the Judges of that time, were particularly aware of the Act of Settlement of 1701 establishing judicial independ-

ence, but its principles had become simply a part of the justice system and generally understood. The presence of a small number of legally trained Judges in the urban areas in those early days undoubtedly served to fortify this persistent but nevertheless fragile tradition.

The rapid expansion after 1950 accentuated administrative control by the government. It is a considerable tribute to the Attorney General, R.W. Bonner, Q.C., and the then deputy Attorney General, Gilbert Kennedy, Q.C., that despite a necessarily increasing responsibility on them in all matters affecting the Magistrates' Court, there is every indication that whatever procedures had to be followed were always with full recognition of the need to preserve judicial independence, the importance of the subject being emphasized at every Magistrates' Conference.

In 1969 it was decided that the Magistrates' Criminal Court, the Family and Children's Court and the Small Debts Court should be given a status commensurate with their responsibilities, the necessary legislation bringing about the Judicial Council and thus the commencement of the process of removing control of the magistrate from government to an independent body. That year the Honourable the Attorney General, L.R. Peterson, Q.C., presented the Provincial Court Act to the Legislature and a new Court with old traditions came into being.

It has been postulated that the Provincial Court Act 1969 basically altered the status quo of the Act of Settlement 1701 as related to the Provincial Court. This of course was not the case in that the Magistrates' Court had, in British Columbia, always been under the authority of Cabinet and particularly the Attorney General. What the Act of 1969 started to do and effectively completed with the Act of 1975 was to move the control of the Provincial Court back to the principles of independence enunciated in the Act of 1701, reposing judicial tenure with an independent body, the Judicial Council rather than, as in England and at Ottawa, with the legislature.

The English route had proved cumbersome and difficult for the control of Judges who misbehaved, the public being prepared to put up with occasional serious unjudicial conduct rather than having the independence of all Judges restricted.

But now it was 1969 not 1701. The attitude of the public toward many things had changed and blind submission to intolerable situations were no longer the order of the day. Just as a change in public attitude caused the Law Society in 1948 to institute a fund to reimburse the public for defalcation, the public being no longer prepared to accept dishonest lawyers as a fact of life, so it had become obvious that the public was no longer prepared to accept serious judicial misconduct without remonstration. Consequently it was for the government of the day to seek for the Provincial Court Judges some different path between executive control and control by the legislature. The

solution to the problem was the provision in the Act for a Judicial Council consisting of Judges, bar representatives and laymen which would consider proposed appointments of Provincial Judges and complaints against members of the Court - both matters closely involved with the principle of judicial independence.

Something has already been said of the efficacy of the system for judicial appointments as a function of Judicial Council. It would seem difficult to devise a better arrangement, certainly from the point of view of independence of the judiciary, the outstanding feature found nowhere else in Canada being that no appointment can be made save on the recommendation of the Judicial Council.

There are four further matters of concern relating to judicial independence.

The first is the manner of dealing with complaints of improper judicial conduct. There were and are two broad types of complaints, those which the Chief Judge considers and finalizes and those which lead to inquiries by the Judicial Council.

In respect to the first group it is for the Chief Judge, in relation to any complaint, to recognize the individual Judge's independence while at the same time ensuring that in proper cases there is judicial accountability.

Concerning the second group where judicial independence is very much at stake there have been three inquiries concerning Provincial Court Judges over the period 1969 to 1979. The hearings and the results have been a learning experience for the Council, the Chief Judges, the Judge immediately concerned and for all Judges.

The first inquiry held in camera resulted in a number of amendments to the Act to improve the mechanism of the inquiry itself. Subsequent inquiries have been heard in public, the 1981 amendments to the Act requiring public hearings unless in the public interest the tribunal decides to the contrary.

The second inquiry revealed further problems both with the composition of the Judicial Council and the mechanics of inquiry itself and again necessary amendments were made to the Provincial Court Act.

The third inquiry left many members of the Cabinet unhappy with the results and there were suggestions of regressive legislation. The then Attorney General the Honourable G.B. Gardom, Q.C., persuaded his colleagues otherwise on the basis that there would be a Provincial Court Act Review Committee to consider the existing disciplinary provisions in the Provincial Court Act. Had he not been able to do so judicial independence could have suffered a very severe defeat. While the Court itself did not much enjoy having its bones picked over by various outside personages, nevertheless it was well represented on the committee and important results ensued,[1] partic-

1. Report - Provincial Court Act Review Committee, May, 1979

ularly in clarifying the Chief Judge's position as a confidant of the Judge, Justice or Court Referee whose conduct was being reviewed, further to enable the Chief Judge to take much broader steps by way of an investigation and corrective action short of an inquiry and if a formal inquiry became necessary to give the Judicial Council a wider ambit in the matter of disposing of charges. The legislation also gave the authority to the Attorney General to order an inquiry although the Chief Judge had not seen fit to do so. However, the fact that the substance of the original investigation of the Chief Judge would have been reported to the Attorney General would give the latter ammunition to resist political pressure. Furthermore it is rather difficult to visualize a situation where the matter under review was of an enormity that the Chief Judge would accept what the Attorney General found unacceptable. In any event at some point Government must have the right on behalf of the public to take action. The foregoing amendments were put in place in 1981 and, happily, there has been no occasion to test their efficacy.

Through these processes over the years the office of the Chief Judge, the Judicial Council and the individual Judge has gained much experience in a very delicate area firming up their understanding and responsibility as to both judicial conduct and judicial independence.

The second matter of concern relates to the danger that the necessarily close juxtaposition of the Provincial Court to the Department can militate against judicial independence. The Provincial Court Judge of necessity deals with government officials on a daily basis on provisions for juvenile programs, programs for alcoholism, temporary absence arrangements, family court problems and so on as opposed to the relatively insulated federally appointed Judge. This close relationship can lead to difficulties. Not only the individual Provincial Court Judge but more importantly the Chief Judge has to constantly monitor the situation to ensure that the relationship between the executive side of government and the court does not impede its freedom with consequences to the rights of the public.

That such dangers exist and can arise in the future is well illustrated in the inquiry held by Mr. Justice P.D. Seaton and reported to the Lieutenant Governor of British Columbia October 23, 1979 concerning an allegation of interference with the independence of a Judge by personnel in the Ministry of the Attorney General.

Mr. Justice Seaton found no evidence of sinister conduct or improper motive. He did find conduct that was inappropriate.

The evidence led during the inquiry is not of interest to this story but excerpts of his Lordship's report[2] as they bear on some of the essential requirements if a Judge is to maintain independence are:

"Independent Courts were and still are a frustration to those with

2 Report dated October 23, 1979 of Commission to inquire into and report on those certain matters set out in Order-in- Council #1885 dated 7.5, 1979

executive power —"

"Two and a half centuries ago it was recognized that the rule of law was to prevail and that it could not do so without an independent judiciary."

"It has been suggested that independence is for the benefit of the Judge: it is not. It is for the benefit of the litigant, most obviously the litigant who is opposed by a branch of government."

"The vesting in the Chief Judge and Administrative Judges who assist him of the power to assign Judges and cases is an essential step in the evolution of an independent court."

"A Judge cannot be independent if his secretary and those around him are accountable to others or if the Registry staff watch him and report their observations to others."

"I conclude that the relationship between the Court Services and the other Divisions of the Attorney General's Ministry and the use that was made of that relationship — poses a threat to judicial independence."

His Lordship then went on to consider and reject a submission to the Commission which in essence suggested that Judges should be accountable to the Attorney General on the basis that that Office held a position analogous to that of the Lord Chancellor in England. Some excerpts of his comments concerning this submission are as follows:

"Paragraph 16 is an attempt to justify the unjustifiable, a suggestion that Judges should be accountable to the Attorney General. In many respects the Provincial Court is the most important court in British Columbia. More citizens appear in it than in all of the other courts combined. It would be unfortunate if it were made less than a true court."

"The Provincial Court is at once the Court most subject to influence by the Attorney General's Ministry and the Court most in need of independence from that Ministry."

"Judges are not part of a government team. Their function is separate and distinct. Not infrequently they decide between government and individuals and they must not be associated with either — he has to be thoroughly independent of the Ministry — he must be seen by the public to be independent of the Ministry."

"Most of the cases coming before Provincial Court Judges have Crown Counsel, employees of the Attorney General's Department, on one side. On the other side there is an individual perhaps represented by a member of the Bar. The Judge's place is in the middle, as independent from one side as from the other. Some cooperation is essential. Many communications between the Ministry and the Judge are unavoidable, but it must always be kept in mind that the Judge has separate responsibilities.

It is the Judge himself who is primarily responsible for the main-

tenance of his independence and the independence of the judiciary generally. The Chief Judge and others with administrative duties must act as a buffer between the executive and individual Judges. All Judges, especially those with administrative duties, must be vigilant to preserve their independence and the independence of their court. They must keep the Ministry, just as they must keep all others, at arm's length. In addition, there is a duty on those in the Ministry to keep in mind the threat to judicial independence that arises from the employment in the same Ministry of court personnel and those whose job it is to represent the Crown in the Courts."

The Honourable Mr. Justice Peter Donald Seaton
The Court of Appeal of British Columbia

The Hon. Mr. Williams, in part, Hansard, May 3, 1980 - p. 1199

"— the report is valuable for the enunciation of the fundamental importance of an independent judiciary to all persons who would maintain a free society enjoying liberty under the rule of law. The Hon. Mr. Justice Seaton in his careful review of the development of this vital aspect of our judicial system has restated the determining principles which are the root and function of the judiciary in this nation, and has reminded all of us, judges and judged alike, of the obligations which must be understood, accepted and discharged if the central ingredients of an independent judicial system are, and are seen to be, preserved."

"— Mr. Speaker, as Attorney-General for this province, I wish to state unequivocally that I and the officials of the ministry who are charged with the superintendence of the administration of justice in this province have accepted without reservation the obligation of ensuring that in the discharge of those responsibilities no conduct will be countenanced which has, or may be seen to have, the effect of impairing the ability of any member of the judiciary to render a

fair and unbiased decision, a just decision in accordance with the law."

The result of the inquiry was that the Act was again amended in 1980 to ensure that the Chief Judge controlled the court administration process. "Subject to the direction of the Attorney General and the direction of the Chief Judge in matters of judicial administration, the chief administrator of court services shall direct and supervise facilities, registries and administration services of the court."[3]

Superficially that would appear to settle the matter. There is in fact no clear-cut definition of "the perimeters of judicial administration" and it remains for the Chief Judge and Judges generally to control the situation in the spirit of the foregoing amendment and there is an argueable authority by virtue of the legislation. In this regard certainly trial setting must rest with the Court for the protection of judicial independence and sequentially for the protection of the public and the provision of the trial coordinators under the direction of the Court has proved generally beneficial not only as time saver to the Courts, the police, the Bar and the public alike but as importantly an additional statutory bulwark to judicial independence.

The third concern was the fact that under the Provincial Court Act until 1986 the Attorney General established the emolument of Judges. That the danger of judicial bias arising in this regard is more illusory than real was considered and decided by the Court, R. vs. Cairns.[4] Mr. Justice Paris, after quoting from R. vs. Valente No. 2[5] had this to say,

> "Right-thinking people understand that until better arrangements are arrived at, this is the vehicle (sic the Attorney General) by which administrative control, that is, the public's interest in the remuneration of Judges, is maintained. Judges, although an independent branch of government, must be paid somehow from public revenue and some arrangements to effect that must be made. This is a continuing problem for the judiciary at all levels but the necessary mechanisms can evolve. Perhaps they will in British Columbia. However, I cannot find that that arrangement or the other arrangements under which the Provincial Court of British Columbia operates, even considered cumulatively, deprives it of its independence or appearance of independence."

Mr. Justice Paris's words "the necessary mechanisms can evolve. Perhaps they will in British Columbia" proved prophetic. By an amendment to the Provincial Court Act, Bill 36, 1986 it was enacted that "the compensation of Provincial Court judges be fixed by resolution of the Legislative Assembly." Thus any doubts as to the

3. Attorney General's Statute Amendments 1980 #23
4. R. vs. Cairns - Vancouver Registry CC 850424, March 11, 1985
5. R. vs. Valente No. 2 - 1983, 2 CCC (3rd) 417

independence of the judiciary in regard to the method of compensation were resolved.

The fourth concern was the incident concerning the termination of the lay Judges through the enactment of the Provincial Court Act, 1975 as detailed in Chapter 6. The propriety of the legislative action taken at that time can be argued vis-a-vis judicial independence, but it was done and serves as a reminder that government, subject only to the wishes of the electorate, has the final say although the Charter of Rights may involve new considerations.

The case of Valente and Her Majesty the Queen, referred to earlier in this chapter, was heard by the Supreme Court of Canada and the appeal dismissed December 19, 1985.[6]

What was decided was that a Judge of the Provincial Court (Criminal Division) of Ontario is an independent tribunal within the meaning of 11(d) of the Canadian Charter of Rights and Freedoms, the tests applied being security of tenure, financial security, and independence in matters of administration bearing on the judicial function.

Comparison of the Ontario and British Columbia Provincial Courts Act would indicate that the judgment more than covered the related provisions of the Provincial Court Act of British Columbia and consequently the Provincial Court of British Columbia is established as an independent Court.

In looking back at events since 1969 one can point a finger at individual actions concerning judicial independence on the part of government, Judicial Council, Chief Judges and Judges that might have been handled differently or better or worse. On the other hand, if one considers that all parties were and are constructing a complicated mechanism where virtually none previously existed, the results have been good. There remain problems and there will be further contretemps but the excerpts of the comments of Mr. Justice Seaton contained in this Chapter together with the present provisions of the Provincial Court Act afford a proper guide for the path ahead toward the goal of a strong and independent Court.

6. Walter Valente and Her Majesty the Queen, SCC, December 19, 1985 - 64 N.R., p. 1.

8. Judges' Honorariums

Fees only on conviction — Concerns expressed at the Magistrates' Conferences — Gradual improvement — Government takes over all salary responsibilities, 1969 — All Judges to receive the same salary, 1975

Judges have to eat and unless a proper stipend is paid the position will not attract the type of person demanded for the task.

As mentioned in Chapter 1 in the pre-Confederation days on Vancouver Island, the government was able to select men of means who could look after their own needs and did not have to be paid - doing the job for the honour and the glory. On the Mainland, through the same period, the honour and glory boys were not available and Stipendiary Magistrates were appointed, being charged with many additional government responsibilities and relatively well rewarded. After Confederation, the Judges in the few urban centres called Police Magistrates were paid by local government, the amount being set by the Provincial government generally by agreement with the municipality concerned, each Judge having worked out a prior arrangement if he could with that municipality.

In the unorganized territory, it was a matter of fees allowed under the applicable Act, Provincial or Federal, and for a very long while, these Stipendiary Magistrates were hardly paid at all. Provincially, this situation arose in 1878 - "that Schedule A of Order in Council of May 30, 1873 be amended - that no fees be allowed to Justices of the Peace out of Provincial Funds." What this meant in essence was that the Magistrates in country districts were only paid a fee by the government if the accused was convicted. If there was an acquittal he did not receive a fee at all. This sort of arrangement would place a considerable strain on any Bench. The reason for the Order is not clear. It may have stemmed from the County Court Ordinance 1869 which prohibited the claiming of fees by officers of the court - appropriate enough because those Judges did receive reasonable pay as combined Stipendiary Magistrates and County Court Judges or it may have stemmed from a somewhat similar practice concerning Federal offences.

In any event the situation raised a problem for aspiring counsel. There were two approaches. The first, known as the direct approach and to which the writer subscribed when commencing practice in 1935, was for defence counsel to approach the Magistrate before trial and indicate to him that the fee, $2.50, would be paid by the defence

if the accused was acquitted. Actually your narrator did not pay out many $2.50's, the Magistrate concerned holding rather consistently to the view that the police would not lay an information unless the accused was guilty!

The second approach was by the Magistrate, as portrayed in the excerpt from the following memo received by C.M. O'Brian Esq., Q.C., then President of the Vancouver Bar Association from an up-country member of the profession.

June 1, 1926

> "One particular case was brought to my attention by this member of the Bar in which the Magistrate is a very very old man and he has practically no other source of revenue than his fees and he approached this member of the Bar and explained that whenever he acquitted he lost his fee and invited the barrister to pay the hearing fee on cases conducted by him in which there was an acquittal. This placed the member of the Bar in a very unenviable position and he took the line of least resistance and agreed to pay it. What is now happening is that in every case where there is an acquittal the Magistrate calls at his office and receives the hearing fee. The other members of the Bar living at the same place are aware of the fact and no doubt they pay the same fee and there is no criticism amongst them but this barrister feels his position acutely and invited me to bring the matter before the Bar Association and have them express an opinion for his assistance. He explained to me that he has obviously the following courses open: One; refuse to pay the fee, which might lead to the unfortunate result that all the accused get convicted or that they would take their business to a lawyer who had made better arrangements with the Court. Another course would be to bring the matter to the attention of the Attorney General which would be equivalent to charging the Magistrate with misconduct. The third thing is to pay the fee and let matters take their course. I was told that there is really no serious fear that the interests of justice are being affected as the Magistrate is believed to be a man of perfect honour notwithstanding his extraordinary proposal."

This matter was referred to the Benchers of the Law Society by Mr. O'Brian by letter July 5, 1926. He wrote in part,

> "to put the matter very concretely it would be considered outrageous if a Judge of the Criminal Assize Court should only get paid his fee in cases where a conviction was entered — The present system is certainly not conducive to the proper administration of justice in this Province."

The Benchers took the matter up with the then Attorney General the Honourable A.M. Manson, K.C., at their meeting October 4, 1926.

He advised them that the government had the matter under consideration, which of course meant that nothing was done for another thirteen years when a 1939 amendment to the Magistrates' Act[1] provided that in unorganized territory, for Provincial but not Federal matters, the Magistrates would be entitled to receive a fee of $2.50 win, lose or draw. The foregoing story reflects little credit on the Attorneys General through the years who were obviously aware of the situation and, as legally trained persons, would have been alive to the need of an independent judiciary and the strain which this situation must have placed on the whole system. Indeed it was not tidied up on the Federal side until 1960 when, as will be seen, the Province assumed responsibility for Magistrates' fees under both Federal and Provincial Statutes.

The long interregnum of the $2.50 fee for conviction only was but one example reflecting the general disinterest of both Federal and Provincial Governments concerning the Magistrates' Court and a remarkable trust in the patient Magistrates. Indeed, during this time and for many years afterwards, up-country Magistrates were improperly paid or paid not at all for many services both Federal and Provincial. The list was long and included preliminary inquiries and Juvenile Court hearings.

With the commencement of the Magistrates' Conferences this unhappy situation began to surface and it was at the 2nd Conference in 1948 that Magistrate Rowlands of Kamloops addressed the meeting mildly suggesting[1] "that we are entitled to remuneration corresponding to the job we have as Magistrates. It would not offend the public or the public purse if a certain sum of money was allotted to them — why shouldn't we be paid a decent honest figure for honourable work."[2] The matter was referred to the Attorney General and no changes immediately occurred except, probably adding insult to injury, the Department of Finance undertook to pay the Magistrates the postage they incurred sending in the fines for the cases for which they received no fees.[3]

At the 1953 Conference the Magistrates were becoming somewhat more definite, Magistrate Seabrooke observing plaintively, "that it doesn't seem right (on a preliminary) that we are the only individual in the courtroom that does not receive a fee."[4] After discussion a motion was passed, "whereas it has been generally agreed by this convention that the present remuneration of stipendiary Magistrates, especially country Magistrates, is inadequate. Be it resolved therefore that all Magistrates in British Columbia receive a regular stipend in addition to the fees now drawn."[5] The discussion continued at the

1. R.S.B.C., 1939, C 31
2. M.C. 1948 p.79
3. M.C. 1953 p.10
4. M.C. 1953 p.53
5. M.C. 1953 p.94

Magistrates' Convention in 1955. Meanwhile the situation had deteriorated on the Federal side. While the Magistrates received their adjudication fee under the Provincial Summary Conviction Act of 1955, the 1955 Criminal Code not only provided no fee for preliminaries but the ban was extended to hearings of indictable offences that could be heard summarily on the basis that the parties should not have to pay the costs. Mr. Garson, the Minister of Justice, was very emphatic when the matter was under discussion in committee "unless the Provincial authorities are prepared to shoulder the great bulk of these costs rather than the parties to those summary conviction matters "...." I have not the slightest doubt that in most communities it will be quite possible to find first-class men and women who will count it an honour to discharge with great competence the important function of the administration of justice in their community even if their fees are only nominal."[6]

Some of the Magistrates were dubitant at the 1955 meeting when Magistrate Birch of Ganges stated, "that we should not be what I might say commercially minded. We're not forced to take the position of Magistrate. — perhaps you are contributing something toward Canada when you take the position of Stipendiary Magistrate and do it gladly."[7] To this, Magistrate Winstanley wryly replied that "St. Matthew was every bit as important as St. John in the doctrines we live up to. St. Matthew was a tax gatherer and he was the treasurer and he got his dollar."[8]

While it was easy enough for the Honourable Mr. Garson from a comfortable economic seat in Ottawa to talk of "the honour and no other reward than honour" his views did not realistically face the harsh realities of burgeoning inflation and demands on the Magistrates' time. Happily and resulting no doubt in part from the interest of the Magistrates in the fee problem and its obvious judicial inequities, the Province, in 1960,[9] worked out an arrangement with Ottawa whereby Magistrates were to receive fees from the Province whether the matter was under the Criminal Code or Provincial Summary Conviction Act. They were not too generous but they were a start in the right direction:

- for a guilty plea and sentence $ 3.00
- for a trial on a not guilty plea $ 5.00
- for a preliminary hearing $15.00

all these fees were irrespective of the time spent - a three day preliminary was still $15.00.

This arrangement continued until 1965 when the fee per case arrangement was terminated, the Magistrate in the rural districts

6. Hansard - March 11, 1954 p.2913 & 2915
7. M.C. 1955 p.33
8. M.C. 1955 p.34
9. R.S.B.C., 1960, C 227

receiving $100 per month which could be increased by negotiation with the Attorney General's Department.[10] Judges were advised not to discuss their salaries with other Judges presumably to avoid a common front. Inevitably, the resulting delicate manoeuvres of individual Judges became known as the "potted palm negotiations". The government was "hard-nosed". One Magistrate, a lawyer, writes that repeated letters to Victoria brought nary a reply. He resigned. This brought the District Judge who arrived with an offer of settlement on the basis of a $100 a month increase instead of the $300 asked. The letter goes on "I am ashamed to say I buckled under".

Where a municipality collected the fines they paid the Judges who sat there and these salaries were negotiated between the Judge and the municipality but ultimately fixed by the Province. It often happened, particularly with legally trained Judges, that fees would be shared among various municipalities with one centre acting as banker for the group. An example in those years was His Honour Judge Harold Keenlyside in South Fraser. His salary was divided into nine parts, 8 municipalities and the Province. Fortunately, Surrey agreed to act as banker and he only received one cheque!

The foregoing methods of reimbursement continued until the passage of the Provincial Court Act 1969 when the Provincial Government took over, as of April 1, 1969, the responsibility of paying all Magistrates and after August 1st, 1969, all Judges of the Provincial Court of British Columbia.

With the mixture of full-time and part-time Judges, some legally-trained, the majority not, and many sitting only occasionally, the matter of an even emolument for all Judges remained a difficulty. The problem was solved in 1975 with legislation providing that there be only full-time, legally- trained Judges for all Courts, Criminal, Juvenile and Family and Small Claims, each Judge to receive the same honorarium.[11]

This resulted in the cessation of salary negotiations by the individual Judge in favour of the Chief Judge and the Judges' Association on one side and the Honourable the Attorney General on the other. Some mention of the Association's part in subsequent negotiations and the problems will be found in Chapter 9.

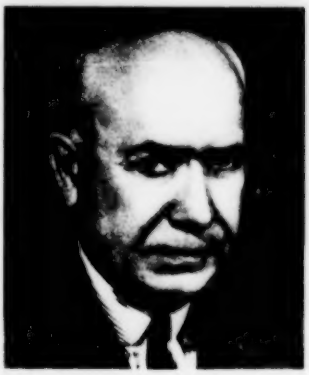
As matters stood until 1986, while the Attorney General was empowered under the Provincial Court Act to set the salaries it was wishful thinking that this indeed was the case, the Honourable Attorney General's best intentions being governed by Treasury Board.

The problem of who fixes the salary had raised concerns for the possible infringement of judicial independence, the matter being reviewed in R. vs. Cairns[12] and Walter Valente and Her Majesty the

10. S.B.C., 1965
11. S.B.C., 1975, C 57
12. Vancouver Registry #C.C. 850424 - S.C.B.C., March 15, 1985

Queen.[13] There were suggestions that either the Federal arrangement whereby the Legislature establishes the quantum or alternatively, some sort of an independent board should from time to time adjust the salary. After looking at these alternatives legislation "tailored" after the federal legislation in the Judges' Act concerning salaries was introduced and passed by the Legislative Assembly in 1986 by amendment to the Provincial Court Act. Designed to reinforce the independence of the judiciary the legislation most certainly lays to rest any lingering doubts in that regard from the viewpoint of either the public or the judges themselves. Indeed, looking back at the expectation of government when Judges were only paid if they convicted and finding every evidence that they preserved their objectivity and independence throughout that trying time there does not realistically seem any danger that now or for the future the Provincial Court would depart that traditional route.

13. Supreme Court of Canada # 17583 - December 19, 1985.



C.M. O'BRIAN, Q.C.
Past Treasurer of the Law Society of British Columbia. As President of the Vancouver Bar Association he officially raised the magisterial problem of no conviction, no fee, July 25, 1926.

MAGISTRATE DAVID WILLIAM ROWLANDS of Kamloops, the first to raise the general question of magisterial honorariums - Magistrates' Conference, 1948. Born in Cardiff, South Wales, he came to Canada 1890, worked for the C.P.R. and later was the editor of the Ashcroft Journal. He was appointed Justice of the Peace 1913, Magistrate 1929.

9. The Provincial Judges' Association of British Columbia

Origins — The Seminars — National Association — Code of Judicial Ethics — Pensions and salaries — Newsletters — Administrative problems — Reporting of Provincial Court decisions — Robes — Libraries — General

The Provincial Judges' Association of British Columbia has over the years become an important element of the fabric that makes up the Provincial Court. Something of its evolution and activities are here outlined.

The early impetus toward an association came initially from the up-country judges who sought to establish a clearing house for at least some of the legal problems Magistrates encountered.

The first direct action towards the formation of a Judges' Association appears in the Magistrates' Conference Report of 1953. Magistrate Guy Constable of Creston reported that he had joined the Magistrates' Association in England and, feeling that the formation of such an association in this Province would be advantageous, had circulated some of the Magistrates asking if they were in favour of the idea. He received 60 affirmative replies and one negative. He stated: "The basic idea behind the Magistrates' organization is to assist in being better informed on the law and administering the law."[1] Certainly for those who were away from the large centres, mainly lay Magistrates, the idea of more information of what they were supposed to be doing would be attractive, particularly as both the Provincial or Federal governments at that point were providing little or no on- going help in legal expertise.

Colonel Pepler, then Deputy Attorney General, was asked his view on the proposal and managed to convey the gentle but effective threat: "The government at the time might say, 'Well, the Magistrates have their own Association, let them convene if they want to, let them have their own meetings and manage their own affairs.'"[2] In other words the Magistrates, the majority of whom were untrained and unpaid, would no longer enjoy even an annual conference and a free meal if they formed an Association of their own.

It seems likely that the government did not wish to see a Judges' Association which, interested as it would be in educational matters,

1. M.C. 1953 p. 54.
2. M.C. 1953 p. 57.

might stray into dangerous areas such as stipends, supply of criminal reports and legal texts, court accommodations and the like - all of which would cost money and not capture many votes.

Stipends certainly did concern the unpaid, out-of-town Magistrates who, to the best of their ability, were performing the same task as the few legally-trained Magistrates in urban centres who, for those days, were reasonably well paid by their municipality.

In the discussion at the 1953 Conference concerning the proposed Association it became clear that the only material generally supplied to the Magistrates was the Criminal Code on appointment without subsequent amendments and sometimes a few Provincial Statutes. Magistrate Parker Williams of Trail pointed out the desirability "that Magistrates — not be dependent entirely upon the police for prosecution or for interpretation of the law."[3]

The point was then made that an Association could act as a clearing house for legal problems to be dealt with at the next conference. This suggestion was in fact taken up by the Department which, over subsequent years, invited Magistrates to submit problems to be dealt with at subsequent conferences by legally-trained Magistrates and senior lawyers attending the conference.

Because the Judges proposing an association were rather inaccessible one to another and partially, no doubt, due to the demonstrated lack of enthusiasm on the part of government, nothing further occurred in this direction for almost twenty years.

Finally, as related in Chapter 5, there were significant changes in the whole court system culminating with the establishment of the Provincial Court of British Columbia in 1969.[4] By that time, there were some twenty-five legally trained Magistrates on the Lower Mainland instead of five as in 1953. Consequently, when in 1969 the Provincial Court Act was passed providing for a Senior Judge, the title being changed to Chief Judge in 1972, and for a Judicial Council to undertake judicial selection, education and discipline, the rank and file in the Lower Mainland sensed some form of new bureaucratic control and felt that the time had come for an Association to ensure that the Judges generally had some organization for mutual protection and at the same time provide a facility to improve their judicial capabilities and their economic status. The Vancouver Judges, in consultation with others on the Lower Mainland, sparked the suggestion.

On April 14, 1971, His Honour Judge L.S. Goulet (later the Chief Judge) wrote to the Secretary of the Provincial Judges' Association in Ontario advising that there had been some informal discussions in British Columbia that "we form an Association similar to yours." The letter went on to request a copy of the Ontario constitution and other material that might be considered to be helpful. It concluded rather

3. M.C. 1953 p. 59.
4. S.B.C. 1969 Cap. 28.

plaintively "I will be pleased to reimburse you for any expense involved, though would appreciate being advised in advance if it is to be substantial."[5] The Ontario Association (Criminal Division) answered with full details and needless to say without charge.[6] On May 4, 1971, a notice was circulated to all full-time Provincial Court Judges in British Columbia indicating that the Vancouver Judges thought it would be helpful to obtain an expression from all the full-time Judges as to the formation of a Provincial Judges' Association. This notice was signed by Joyce Ramer, Secretary pro-tem, Provincial Court Judges (Criminal Division) Vancouver (a public stenographer who was later to do yeoman service in production of the Newsletter).

The notice also stated that it was the feeling of the Judges (Criminal Division) in Vancouver that initial membership in the Association should be limited to those Provincial Court Judges who served on a full-time basis.

In the result, the first meeting of the embryo Association was held June 19, 1971 in the Devonshire Hotel, Vancouver, B.C. Judge Maurice Mulligan, who had been an active exponent of a Judges' Association, acted as pro-chairman, advised the meeting that the great majority of the full-time Judges replying to the circular, May 4, had indicated approval of the formation of an Association and that now it was intended to approach all Judges, part-time or full-time, legally-trained or lay, to ask them to join.

He further advised that on June 9 the Vancouver Judges had had a meeting with the Senior Judge, later Chief Judge Cyril White, who, while expressing approval of the idea of an Association, felt that it should be delayed for six months to ensure that there was no conflict between what the Association would be doing and the plans already underway by the brand new Judicial Council.

After discussion the meeting was of the opinion that there would be no conflict between the Association and any program or undertaking by the Judicial Council or the Attorney General's Department and it was decided to proceed. It was moved by Judge Gordon Johnson of Vancouver, seconded by Judge H.E. Alder of Victoria that an Association of British Columbia Judges be formed and that it be called Provincial Judges' Association of British Columbia. This motion was carried unanimously.

Officers were elected as follows: President, Judge L.S. Eckardt, Vancouver; First Vice-President Judge G.H. Johnson, Vancouver; Second Vice-President Judge H.S. Keenlyside, South Fraser area; Secretary, Judge L.S. Goulet, Burnaby; and Treasurer, Judge N. Friesen, South Fraser area; Directors -Judges H.E. Alder, Victoria; H.B. Estlin, Nanaimo; R.B. Allan, Nelson; T.L. Steele, South Fraser area; R.F. Marshall, New Westminster; W.S. Selbie and A.L. Bewley, Vancouver.

5. Letter from Judge Goulet to Provincial Judges' Association, Ontario, April 14, 1971.
6. Letter from Ontario Association (Criminal Division), May 3, 1971.

The constitution was modelled on that of the Provincial Judges' Association (Criminal Division) of Ontario. It has been amended from time to time and the objectives were re-stated in 1980, appearing in the Constitution of Provincial Judges' Association of British Columbia as follows:

1. To discuss and study the administration of justice generally and particularly as it applied to Provincial Courts.
2. To create uniformity as well as may be done in the procedures of the Provincial Court.
3. To create uniformity as well as may be done in the sentencing of offenders in the Provincial Court.
4. To discuss and study all matters pertaining to the duties and welfare of Provincial Judges and recommend to the appropriate authorities such action as may be considered to be proper.
5. To keep all Provincial Judges, whether members of the Association or not, informed on all matters pertaining to their duties.

On October 14, 1971, the Secretary, Judge Goulet, advised that the Association "now stands at 108".[7] On March 7, 1972 the Secretary advised of the first annual conference to be held in Kamloops in September, that annual fees would be $25 per year and that commencing April 1, a bi-monthly newsletter would be published with Judge Alfred Watts as editor.[8]

Early in 1972 the Executive of the Association, in line with their concern for member judges, had occasion to remonstrate with the then Chief Judge who had issued a directive to Judges that they give the time of arrival and departure from court buildings, the number of hours spent on the Bench each morning and afternoon, the number of cases heard each day and the number of cases adjourned. The directive was intended to supply information of judge availability to help to cope with a back-log of trials occasioned by a strike of Court administrative staff. Indeed on June 29, 1972, to help out, ad hoc judges were appointed for the Vancouver Court among others Miss Mary Southin, now the Honourable Madame Justice Southin, G.R.B. Coultas, presently Chief Judge of the Provincial Court, Professor Ray Herbert, Q.C., Phillip Shier, Esq. and the late J.E. Eades, Q.C. In any event the Executive Committee, in its minutes of August 9, 1972, expressed the view that the directive was incompatible with the trust reposed upon Judges and offended the dignity and independence of the judicial office and accordingly endorsed the decision taken by those Judges notably in the South Fraser District who, although more than willing to volunteer for extra duty, refused to comply with the directive.

7. Secretary's Report, October 14, 1971.
8. Secretary's Report, March 7, 1972.

The Seminars

The immediate successor to the Magistrates' Conferences which concluded in 1970 was the first Annual Conference of the Association, September 1972 in Kamloops.[9] The papers, addresses and panels at that meeting demonstrated that the Judges were intent on living up to the prime objective of improving their own capabilities. After that first conference, the cost of which was borne by the Judges, the conferences took a different direction in that Chief Judge Brahan, appointed November 2, 1972, together with Professor Noel Lyon, inaugurated in 1973 the quarterly Judicial Institute, obtaining the original seed money from the Federal and Provincial government and the Law Foundation. After the start up the Provincial government assumed the total financial burden. In fact, the Judicial Institute was really only a letterhead and from the beginning the Association provided the organization and source material, the Chief Judge considering it important for judicial independence that the Judges themselves control their own judicial education. Thus, while under the Act the matter of education rests with Judicial Council, it has proved much preferable that the matter be left with the Association with recourse to Council only as a last resort which, as might be expected, has not proved necessary.

It should be made very clear that while the government had financed the necessary disbursements for these seminars, it has been the Education Committee of the Association, at the request of the Chief Judge, that has planned and manned such meetings. All Judges have, as called on, given freely of time, effort and expertise both in the direction of the actual seminars and the preparation of the necessary papers. No price can be put on the work that has been so contributed by members of the Association.

An important recent development has been the establishment of the Western Judicial Education Centre under the direction of His Honour Judge Goulet. This is the first established judicial training unit in Canada. Its objectives are to improve the quality of judicial education and increase the opportunities for judges to participate. It will not displace the seminar system but by research, the production of briefs and the use of modern techniques will ensure comprehensive ongoing programs.

National Association

On April 15, 1972, the Executive of the B.C. Judges' Association passed a resolution favouring the formation of the Canadian Association of Provincial Judges, the founding conference being held at St. Johns, Newfoundland, May 2, 1973. It is not for this work to examine the history of that Association, save to state that Judges from this

9. Report of 1st Annual Converence edited by A. Watts, 1976

Province have steadily supported and contributed to it, opting for universal membership in the Federal body at the annual meeting 1975 and over the years providing papers and leadership for seminars. On the other hand, the members have had full value back in the seminars received and contacts established and the consequential broadening of judicial concepts on a national basis.

Code of Judicial Ethics

The question of a Code of Judicial Ethics or guidelines was generated by an amendment to the Provincial Court Act, 1975, providing that one of the objects of the Judicial Council was to be "the preparation and revision, in consultation with the Judges, of a code of ethics for the judiciary." The question of whether or not the Association should be a party to the preparation of such a code was debated over several years, the Executive of the Association originally deciding to leave the matter alone but later reconsidering on the basis that "if it is going to be imposed by statute then we should participate."[10]

Seminars were conducted in 1976 postulating various ethical problems and seeking the solutions from the attending Judges. The answers obtained demonstrated a wide diversity of judicial thinking on many apparently commonplace ethical matters. The seminars also afforded an opportunity for discussion on the desirability of a code. The sentiments in favour of a code generally were on the basis that "if fitness" was prescribed but not defined in the act, then Judges should have some guidelines as to what constituted lack of "fitness" and the public were also entitled to that knowledge. The expressions against the code were generally that the whole procedure was somehow undignified, that it would be an indication that Judges could not be trusted and from that a concern for the independence of the judiciary.[11]

In the result, the Judges conducting the seminar, K.D. Page, D.C. Reed, and A. Watts, were asked by the Executive to draft such a document - a task much simplified by the availability of a code prepared by the Quebec Judges in 1972, although never adopted by them in that form.

After considering the Quebec draft code, the code of Judicial Conduct adopted by the American Bar Association in 1972 and relevant sections of the Federal Judges' Act, a draft was presented to and approved by the annual meeting of the Association, September 18, 1976, and adopted by the Judicial Council December 3, 1976.

As to its efficacy, time will tell. It serves as a useful guide of what is expected of the individual Judge by himself and by his confreres and the public at large and, for that reason, its precepts should be in the awareness of every Judge.

10. Letter from Judge D.C. Reed to Judge R.W. Greig, May 7, 1976
11. Report to Annual Meeting by Judge A. Watts, 1976.

Pensions and Salaries

As one of the Association's objectives has been the well- being of Judges it follows that considerable time has been spent in the matter of pensions and salaries. Emolument, or the lack of it prior to Association days, is dealt with in Chapter 8 and the present situation specifically as it may affect judicial independence in Chapter 7. While the quest for an adequate emolument is a necessary task, most Judges find it distasteful and, indeed, undignified to have to follow the old saying "the wheel that squeaks the loudest, is the one that gets the grease." Nevertheless, the squeaking has to be done by the Association and by the Chief Judge.

The original recommendations on salaries and pensions were contained in a carefully documented report of the Association in September 1972. In June, 1973, the Provincial Court Judges' salary was established at $26,000.00, somewhat more than the County Court Judge. At the time of writing, the scale is very much on the other foot.

The problem has always been complicated by the factor that, although some federally appointed judges have similar but different responsibilities to the Provincial Court Judge the stipends are settled on one hand by the Federal Legislature and the other by the Provincial Executive Authority.

This latter arrangement was entirely changed by amendments to the Provincial Court Act in 1986 providing that compensation will be fixed by resolution of the Legislative Assembly based on a report of a compensation advisory committee.

This legislation providing a new method for fixing the stipend affords relief to what has previously been a disagreeable task for all concerned and credit is due to the Association and the Chief Judge for the part it and he played in procuring the enabling legislation.

It does not enable the Association to "down tools" on the overall problem and history will reveal the impact of the new legislation.

In a similar fashion, the Association has kept a close watch on pensions although the main thrust toward a non- contributory pension has proved elusive. Certainly in one area, that of the pre-1975 part-time Judges, the Association had much to do with establishing a formula creating a pension where no pension had previously existed.

Newsletters

The Association brought the Newsletter into being in 1972, the first editor Judge A. Watts, and it is now in its 14th year. It has had its vicissitudes and content is always a problem facing every editor. Nevertheless as one of the "ties that bind," it has proved its worth.

Administrative Problems

In a very different area, there has been a natural and constant

concern by the Association concerning the appointment of the Chief Judge, Associate Chief Judges and Administrative Judges, a delicate area where the responsibilities of the Association, the Chief Judge and, at some level, the Honourable, the Attorney General become somewhat co-mingled. As has always been the case, the poor wretches operating at the "sharp end" tend to look with some suspicion on the "guilded staff" and it is a tribute to the Association that it has contributed much useful input in this area without stepping over the line into responsibilities that clearly belong to others.

Reporting

The reporting of decisions and appeals concerning the Provincial Court has been a continuing problem. The sheer bulk of material, mostly on facts, boggles the mind. Nevertheless decisions on the law, on practice and sentencing are important in the name of uniformity.

In 1975 the Education Committee of the Association embarked on a program to establish a clearing house for publication of important Provincial Court decisions, His Honour Judge A.L. Cliffe of Kamloops volunteering to get the program under way. In the end the plan proved not feasible. Following on that and for some time decisions were made available from time to time through the medium of the Association Newsletter. Latterly, this arrangement has been largely superseded by the publication of B.C. Recent Decisions emanating from the Law Courts in Vancouver and by the policy of the Chief Judge in providing a synopsis of important judgments for early circulation to all judges.

These latter methods do quickly provide the Court with essential current decisions and the commercial reports are of course available. There is only so much the individual judge can read and absorb.

Robes

Magistrates did not robe in the old days except in Vancouver and Victoria and court wear tended to be somewhat nondescript. The Honourable J.A. Harvey, Q.C., describes the attire of a lay magistrate, C.H. Drake of Hazelton, "he was a splendid magistrate, fair-minded, intelligent, and something of a scholar. He had an odd way of dressing for Court; an immaculate white shirt with a prominent collar stud but no collar or tie and a sweater instead of a jacket. In spite of that he was the essence of dignity."

However, as the Magistrates came more to the fore in the 50's and 60's, the matter of robing was inevitable. The suggestion was first raised by Mr. Bonner in 1964, "to impress the public with what was involved — and to impress the Magistrate with the duties he was undertaking."[12]

12. M.C. 1964 p. 5

In 1967 the Department provided a uniform gown for lay judges, "not exactly similar, for obvious reasons, to the barrister's gown."[13]

There the matter rested until the 70's when the Association considered the problem. At that time some judges robed, some did not. Some of those who "did not" adhered strictly to a dark business suit, others dressed informally, some of those who robed did so very casually over any kind of inner garment and tie, while still others adopted the Ontario gown or fashioned one, somewhat more colourful, of their own choosing. All in all it was neither a good nor dignified scene. In the end, at the 1975 annual meeting, the Association voted for the Ontario-type gown, a decision then endorsed by Chief Judge Brahan and, to assist the process, in 1977 he was able to arrange for an allowance which facilitated the changeover. Certainly on the basis of the dignity and increased presence of the Provincial Court, the argument that robing is unnecessary has lost its validity and Judges are now so directed. One must have considerable admiration for those who constantly travel in difficult areas but always ensure that the dignity of the court is so upheld.

Libraries

While not strictly an Association matter, the provision of books is necessarily of interest to every Judge and indeed at the request of the Chief Judge it has been Association members who have directed the Provincial Judges' library system.

To the present day Judge access to a law library seems an essential, although the itinerant caliph must, often in far away places, still fly by the seat of his pants and a well-annotated Criminal Code.

The earliest proposal for a judicial library was from George Pearkes, Crown Solicitor for Vancouver Island in 1858.[14] He was then making a proposal to the Colonial Secretary for a Fraser River judiciary, closing his proposal with a plea for "proper legal books and statutes." "It matters not," he said, "however brilliant a presiding judge may be, he will find a constant recurrence to legal books and the statutes absolutely necessary to the just administration of law." Few judges would disagree with those sentiments!

For many years after 1869, when the Law Society was formed, its libraries were the only Court House libraries. There were not many of them, and it was not until 1948 that they began to proliferate. Consequently, over the long years, the Magistrates had little access to legal information.

Indeed, as late as 1953 the Magistrate, on appointment in unorganized territory, received only the bare Criminal Code, unannotated, plus sometimes some Provincial Statutes. In neither case was there any follow up as amendments took place, a sorry state of affairs.

13. M.C. 1967 p. 35
14. Hamar Foster - Law Enforcement in 19th Century B.C., #63 B.C. Studies p. 14 item 32.

Some Magistrates, both lay and legally- trained, had the interest and money to buy books themselves - the late Magistrate Fabian Hugh of Cloverdale was one.

In urban centres, and particularly where legally-trained Judges were appointed, the situation was rather different, the municipality being responsible for the administration and provisioning of the court. Consequently, the availability of the library in those centres depended on the amount of persuasion the individual Judge could bring on the keepers of the municipal coffers. Some did very well as witness the Vancouver Judges' Library, while others were mediocre, but all, generally, better than those in unorganized territory.

In 1953 a small improvement was discernible in that the annual Magistrates' Conferences were producing some reference material but it had to be so hit and miss as to be of little general use, the first document of real value available to all judges being the Magistrates' Manual produced by Magistrate A.M. Guinet in 1967.

From then on, with the great increase in legally-trained Judges, the whole situation began to change. Judges discovered that there were ways of getting books, not only through the municipality, but directly from government through various devious ways - sometimes through the government agent and sometimes, it is related, through expense accounts. The result of this haphazard growth was that the individual holdings tended to reflect what any particular Judge thought useful or interesting. There was no uniformity and some bad buys, but all better than nothing.

In 1973 the Law Society commissioned a survey of all law library resources in the Province. Its report was very sweeping, certainly raising some hackles when it got into the methods of purchasing books by Judges and suggesting the joint use of law libraries by the judiciary and the profession. Resulting from the report, the British Columbia Law Library Foundation, now renamed the Court House Library Society, was formed in 1975, one of its objectives being:

> "To provide law library services of every nature and kind to members of the judiciary of the Province of British Columbia —and without limiting the generality of the foregoing, to maintain, develop and improve the law library services and chamber library collections which have heretofore been provided for Judges of the Provincial Court, County Court, Supreme Court and Court of Appeal by the Department of the Attorney General of the Province of British Columbia."

There were to be three judicial directors on the Foundation Board representing the Court of appeal, the Supreme and County Court, and the Provincial Court.

His Honour Judge P.E. Govan was "volunteered" by the Chief Judge as the first Provincial Court representative.

There were many problems to be faced. While some Provincial Court libraries had reasonable holdings, others lacked the most elementary books - indeed the larger part of $50,000 of the first $100,000 earmarked for the Provincial Court went to the purchase of Statutes. There were, at that time, some 50 places where Judges sat, and the intention was to provide at each such centre at least a text on evidence and a dictionary to supplement the available Statutes. Additionally, a special effort was made to increase the holdings where both the County Court and the Provincial Court held sittings. To further complicate the scene many new Judges, on appointment, and by reason of the nature of their previous private practice, were looking for particular subscriptions and it was necessary to consider these applications individually.

With the new order came problems, particularly with the municipalities, who had paid for most of the existing judicial libraries, seeking recompense. In some cases the books were removed for the benefit of the prosecutors, the police or the municipal solicitor.

All these matters were generally sorted out through an original grant to the Provincial Court of $100,000, shared by the government and the Law Foundation, and a further grant in 1976 from the Department of $100,000 to be shared by all Courts. In 1975 Judge Govan reported in part to the Association as follows:

> "It is not possible for us to afford expensive sets of case reports in centres where the Provincial Court case load does not justify the expenditure. Our funds *are* limited. Also, in circumstances where it is determined that Provincial Court Judges have sufficient access to court house library collections, the contents of the chamber collections must be tailored accordingly. Our obligation to the Attorney General is to eliminate duplication of service wherever possible and to use the public funds where the need is greatest."

In a very short time the government funds became more difficult to obtain and as the monies from the Law Foundation had been seed money the subsequent representatives of the Provincial Court on the Law Library Foundation had to preside over a sharply decreased budget, which in turn brought about what is anathema to any librarian - the cancellation of many reports, not to mention the impossibility of purchasing new and essential series and textbooks. The financial strictures were not the only offenders. In some instances Judges' libraries had, before the advent of the Law Foundation, acquired holdings which were to some extent duplications or were available to them in contiguous Law Society libraries - while not available at all to other Judges in other areas. It proved very difficult to get the more fortunate holders to share the wealth through the transfer of sets. This problem was particularly acute in the holdings of both the Provincial and County Court, and in a similar vein, users sometimes failed

to take proper advantage of the books made available through the very wide distribution of well-equipped Law Society libraries or the facilities of the central library of the Court House Library Society in Vancouver or the similarly situated library of the Court of Appeal. These have been situations noticeable to the Provincial Court representatives and, while perhaps not an overriding factor, it seems clear that in this day and age, unless library administration is lean and mean, it will have problems with the keeper of the purse strings.

And indeed so it has proved, the library system in many instances not fulfilling all requirements because of the unavailability of money but, on the other hand, individual libraries not prepared to institute some transfers that were obviously appropriate.

Having said all that one must none the less conclude, bearing in mind the geographic problems of the Province and what the libraries are expected to service in the way of Criminal Court, Family and Juvenile Court and Small Claims, not to mention the complexities of some 115 Judges of differing academic and judicial outlook, that the whole exercise involves "the indefatigable pursuit of an unattainable perfection" and the Court, one way or another, has generally reasonable access to the information it must have to properly perform its function.

General

Much of what has been accomplished by the Association is not detailed here. The minutes of executive and general meetings, the patient and expert preparation of seminar papers and the faithful attendance of Judges when called upon in all these areas reflect a care and concern for the Provincial Court which no written word can properly describe. Certainly the contribution of the Association and its individual members has resulted in steady and consistent gains and a well-educated and understanding judiciary. It has served to let all parties know what the Judges are thinking, their hopes and aspirations, and these sentiments have undoubtedly rubbed off on respective Chief Judges and the government, causing actions and reactions more favourable than they might otherwise have been. The mere fact of the Association brings about a camaraderie which transcends any minor contretemps that from time to time occur. It must always be borne in mind that, despite all the accoutrements of communications of modern civilization, the geography of this Province separates many members of the court from daily contact with others, and the benefits of an Association enabling a close relationship among Judges sitting in outlying parts cannot be overestimated, not only in contacts among themselves but in bringing to urban Judges the problems faced in other parts of the Province.

The Association has been, and remains, a part of the continuing life of an independent court.

Magistrate Guy Constable of Creston, B.C. He originally suggested a Magistrates' Association at the Magistrates' Conference, 1953. Born in Bury, Lancashire in 1882, he came to Creston in 1904. A respected businessman in that area he was appointed a Justice of the Peace in 1912 and a Stipendiary Magistrate in 1947.

His Honour District Judge L.S. Eckardt of Vancouver (retired). First President, Provincial Judges' Association of British Columbia June 19, 1971.

His Honour Judge Philip R. Govan, who pioneered the library system for Provincial Court Judges, 1975.

The authors of the Code of Judicial Ethics
(All at one time or another Associate Chief Judges)

His Honour D.C. Reed
Administrative Judge

His Honour K.D. Page
Associate Chief Judge

His Honour Judge A. Watts
(Retired)

10. Conclusion

This story of the Provincial Court of British Columbia is only an introduction to the beginning of its history. One hundred years from now will be a better time to retrospect its progress and assess its value to the Society it serves.

Nevertheless, it is a considerable span of time from 1850 when Governor Blanshard appointed Dr. Helmcken as Magistrate for Fort Rupert to 1986.

It has been the writer's good fortune to participate at the Bar and on the Bench in the workings of the Magistrates' Court and the Provincial Court for 50 of these years and to have researched before that era to the beginning. My conclusion is that in a quiet and constant way, the Court has always discharged its obligations and has contributed in no small way to the orderly growth of this Province. In so doing it has established a tradition of service for which it can be proud.

Here the lay Magistrate deserves a special word. Through all the long years he was the honest decent man upholding the law in all corners of the Province. He did it with little recognition or glory and for virtually no recompense, criticisms when they arose were seldom of the Magistrate, the man, but of his lack of legal knowledge for which others were to blame. By his persistence and sturdy endeavour in the face of practically a total lack of everything required to perform a proper judicial service he had much to do with building the solid foundations on which the Court finds itself today. From these beginnings came the gradual transition to a Court composed of professionally trained judges in all three areas, Criminal, Family and Juvenile and Small Claims.

There will be changes. The criminal justice system could see alterations in jurisdiction possibly toward a one court judicial system. The present Family Court authority, tied as it is to the tangled requirements of the British North America Act, cannot, without further adjustment, deliver the service that our family law requires and to which the public is entitled. Increases both in monetary jurisdiction and complexities of the law tend to divert the Small Claims Court from its original goal as a haven for the layman and perhaps procedures must evolve to restore that objective. These problems are for political solution and cannot be solved by the Judges alone.

Like all things in life there is also a gradation in the various levels of the overall court system not so much of legal skills but rather of

jurisdictions and emoluments, the reasons for the latter in some instances difficult to justify. So far as jurisdiction is concerned it is important always to remember that the contrary decision of the appellate court may be quite wrong but because it is last, quite right.

Today the Provincial Court of British Columbia is a Court of Record created independent by statute in the sense of the Act of Settlement 1701 (and in keeping with the Canadian Charter of Rights and Freedoms) and so confirmed by the Supreme Court of Canada.

But "deeds, not words."

It is for the Chief Judge, the Judicial Council, the Provincial Government and the Bar to see to it that the tradition, capability and independence of the Court thus created is recognized and its administrative needs provided.

It is for the individual Judge to justify the status in the light of that recognition.

Provided these essentials are continued, maintained and always strengthened a bright future is portended for the Provincial Court of British Columbia. That is where history has brought it and will take it and really what it is all about.

So having attempted to tell something of the past and with diffidence forecasting something of the future this story comes to an end.

Some Date References

1803	43 Geo. III Cap. 138 gave courts of Upper and Lower Canada general jurisdiction over the Indian territories to the North and West.
1821	I and II Geo. IV Cap. 66 extended the Act of 1803 to give the Hudson's Bay Company control of administration of justice to include the Pacific Slope.
1849	12 and 13 Victoria Cap. 48 provided for administration of justice on Vancouver Island which became a Crown colony, Governor, Richard Blanshard.
1850	Dr. John Sebastian Helmcken, first Magistrate appointed for the Colony to sit at Fort Rupert.
1851	James Douglas appointed governor.
1853	Under Act of 1849, Governor Douglas appoints further Magistrates on Vancouver Island.
1856	Supreme Court of Civil Justice of Vancouver Island established, Magistrates and Justices of the Peace restricted to matters under $250 - in effect Small Debts Court - modelled on English County Court system.
1858	Gold rush on the mainland - Magistrates appointed without authority by Douglas to meet the emergency.
Aug. 2, 1858	Act passed to provide for the Colony of British Columbia 21/22 Victoria Cap. 99. Privileges of the Hudson's Bay Company revoked. Commencement of the policy of appointment of Stipendiary Magistrates with many duties - Government Agent - Gold Commissioner - Lands Officer - Revenue Officer - Coroner, etc.
1859	Ned McGowan's War - Magistrates George Perrier and P.B. Whannell involved.
Dec. 10, 1859	B.C. Small Debts Proclamation creating Small Debts Court for Colony.
Aug. 6, 1866	Union of Colonies of Vancouver Island and British Columbia 29-30 Victoria Cap. 67.
1878	Order-in-Council provides for no magisterial fees unless accused convicted.
1886	Debt Recovery (Small) Act SBC 1886c6 - repealed SBC 1890c9

1892	Criminal Code of Canada enacted bringing together various matters relating to the criminal law previously enacted both before and after Confederation.
1895	Small Debts Act 1895 - of much the same intent as present Small Claims Act.
1908	Federal Juvenile Delinquents Act passed.
1910	Juvenile Court Act Cap. 10 S.B.C. 1910 passed.
1910	June 18, first Juvenile Court established for British Columbia in Vancouver, His Honour Judge A.E. Bull - the first Judge.
1917	First lady Judge for any court in British Columbia appointed in the person of Judge Helen Gregory MacGill for the Vancouver Juvenile Court.
1929	Revocation of Judge MacGill's appointment, Judge Edith Paterson appointed.
1934	Dismissal of Judge Edith Paterson, reappointment of Judge MacGill. Dismissal of Vancouver Magistrates W.M. McKay and J.A. Findlay.
1936	Royal Commission on the penal system.
1939	The 1878 provision of no conviction no fee partially eliminated.
1943	Survey of Magistrates' Courts in British Columbia.
1946	First B.C. Probation Act.
1947	First reported Magistrates' Conference, January 30.
1948	First graduating class, Law Faculty, U.B.C.
1948	Increased magisterial problems - the definite and indeterminate sentence - flood of new laws. First complaints by Magistrates as to lack of emolument.
1950	Start up of legal aid.
1951	A.E. Branca, K.C. - later the Honourable Mr. Justice Branca - calls for professionally trained Magistrates.
1952	Fraser Valley Bar resolution re professionally trained Magistrates. The new generation in government - appointment of the Honourable R.B. Bonner as Attorney General.
1952-1968	Expansion of probation services to cover all of the Province.
1953	Annual conference reflects concerns of Magistrates as to general lack of legal information and also calls for a

	regular stipend and formation of a Magistrate's association.
1955	New Criminal Code results in enlargement of jurisdiction for certain Magistrates to be designated by the Department.
1957	Dr. Gilbert Kennedy Q.C., appointed Deputy Attorney General.
1959	Penticton Bar passes resolution that qualified Magistrates be available as necessary throughout the Province - confirmed at Law Society Annual Meeting same year by resolution calling for travelling Judges.
1959	Department asked His Honour Magistrate W.L. Ostler to experiment with travelling Magistrates for the Greater Victoria area.
1960	Travelling (District Magistrates) appointed to cover most of the Province, Their Honours A.M. Guinet, D.M. MacDonald, Parker Williams and G.S. Denroche - Magistrates to receive fees under both Criminal Code and Provincial enactments.
1962	Legislation designating all Magistrates as qualified under requirements of 1955 Criminal Code.
1962	First moves toward better accommodation for Magistrates' Courts.
1959-1967	Many suggestions at Magistrates' Conferences to improve judicial knowledge - sitting with other Judges, elementary text books, judicial seminars, Magistrates' manual.
1964	Introduction of tape recorders.
1964	Attorney General Bonner suggests that Magistrates should robe.
1965	All Magistrates to receive $100 a month - more by negotiation.
1967	Magistrates' Manual compiled by Magistrate A.M. Guinet.
1967	Robes provided for all lay Judges.
1968	Highwater mark of the Magistrates' Court.
1968	The Honourable R.W. Bonner retires as Attorney General succeeded by the Honourable L.R. Peterson.
1969	Attorney General Peterson calls for Provincial Court Act which was drawn by the Deputy Attorney General, Gilbert Kennedy, Q.C.

Aug. 1, 1969	Provincial Court Act enacted to bring the Magisterial responsibilities concerning criminal law, family and children's law and small claims all under the Provincial Court of British Columbia under the general direction of the Chief Judge and Judicial Council rather than the Department.
1969	Government takes over payment of salaries of all Provincial Court Judges.
July 21, 1970	Judicial Council appointed by Order-in-Council - His Honour Judge Cyril White appointed Senior Judge, later Chief Judge on a part-time basis.
1971	His Honour Judge K.F. Arkell requested by Judicial Council to survey general position of Magistrates including position of lay judges and part-time legally trained Judges in the Court system.
1971	B.C. Branch C.B.A. survey into administration of justice including the Provincial Court.
1971	Formation of Provincial Judges' Association of British Columbia.
1972	First Annual Conference of Provincial Judges' Association of British Columbia.
1972	Founding of Association newsletter.
1972	Attorney General Peterson requests inquiry into administration of Justice by the Law Reform Commission which appointed Mr. David Vickers to establish terms of reference.
1972	Change of Government.
Nov. 2, 1972	His Honour Judge Lawrence C. Brahan appointed first full-time Chief Judge.
1972	There were then 210 Provincial Court Judges - 75 with legal training.
1973	Chief Judge Brahan arranges feasibility study for a Unified Family Court conducted by His Honour Judge W.S. Selbie.
1973	Assumption by Provincial Government of financial responsibility for all Provincial Courts.
1973	Quarterly Judicial Institute commenced.
1973	Canadian Association of Provincial Court Judges formed.
1973	His Honour Judge Govan, Provincial Court representative - British Columbia Law Library foundation.

1973	David Vickers Esq., appointed Deputy Attorney General.
1974	Provision through legislation for Justice Development Commission - transfer of responsibility for prosecutions from municipalities to the Province.
1974	Chief Judge Brahan arranges survey of Small Claims Court in rural areas by His Honour Judge G.R. Sutherland and Mr. Brian Tavernor, J.P.
1974	1858 policy of appointing Government Agent as Magistrates revoked.
1974	Province-wide training program for Justices of the Peace under Mr. Roy Ballam, J.P.
1974	His Honour District Judge Arkell draws new Provincial Court Act.
1975	Provincial Court Act provides that all Judges be trained in the law.
1975	All Judges to receive same emolument.
1975	Jurisdiction of Justices of the Peace to be determined by Chief Judge.
Dec. 15, 1975	Termination of lay Judges.
1975	Official robe for all Judges agreed to.
1975	Funds from Provincial Government and Law Foundation for Provincial Court libraries.
1975	By legislation, duties of Judicial Council clarified as being independent of government.
1976	Cancellation of all Justice of the Peace commissions and reappointment where necessary.
1976	Code of Judicial Ethics adopted.
1977	R.H. Vogel Q.C., appointed Deputy Attorney General.
May 15, 1978	His Honour Judge L.S. Goulet appointed Chief Judge.
May 1979	Provincial Court Act Review Committee reviews disciplinary provisions of the Provincial Court Act.
1979	Inquiry by the Honourable Mr. Justice P.D. Seaton concerning an allegation of inteference with the independence of a Judge.
1980	Amendment to Provincial Court Act to ensure that Chief Judge controls court administration process.
1983	The Hon. E.N. Hughes Q.C., appointed Deputy Attorney General.

Sept. 1, 1983	His Honour Judge G.R.B. Coultas appointed Chief Judge.
1984	Provincial Court Act amended to provide for expanded use of superannuary judges and for the appointment of ad hoc judges who had retired.
1984	All Judges to robe.
1985	R. vs. Cairns decides that Attorney General establishing the emolument of Judges not a threat to independence.
1985	Provision for uniform retirement age for judges at age 70.
1985	Walter Valente and Her Majesty the Queen - Supreme Court of Canada - decides that a Provincial Court Judge of Ontario (Criminal Division) and consequently a Judge of the Provincial Court of British Columbia conducts an independent tribunal.
1985	Western Judicial Education Centre established under direction of His Honour Judge L.S. Goulet.
1986	Provincial Court Act amended to provide that the compensation of Provincial Court judges to be fixed by resolution of the Legislative Assembly rather than the Attorney-General.

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